No. [redacted]

FILED
JUL 8 1957
JOHN T. FEY, Clerk

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1956

No. [redacted] Misc.

G. MENNEN WILLIAMS, Governor of the State of Michigan,

- and -

THOMAS M. KAVANAGH, Attorney General of the State of Michigan,

Petitioners,

v.

HONORABLE CHARLES C. SIMONS, Chief Judge, United States Court of Appeals for the Sixth Circuit,

HONORABLE ARTHUR F. LEDERLE, Chief Judge,

- and -

HONORABLE THEODORE LEVIN, Judge of the United States District Court for the Eastern District of Michigan, Southern Division, together forming a Three-Judge United States District Court constituted under 28 U.S.C. § 2284, pursuant to 28 U.S.C. § 2281,

Respondents.

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS, OR, IN THE ALTERNATIVE, FOR WRITS OF PROHIBITION AND MANDAMUS

- and -

PETITION FOR WRIT OF MANDAMUS, OR, IN THE ALTERNATIVE, FOR WRITS OF PROHIBITION AND MANDAMUS

Thomas M. Kavanagh
Attorney General of the State of Michigan
Edmund E. Shepherd
Solicitor General of the State of Michigan
Counsel for Petitioners
The Capitol, Lansing 2, Mich.

Index To Subject-Matter

Page

Motion for Leave to File Petition for Writ of Mandamus, or, in the Alternative, for Writs of Prohibition and Mandamus 1

Petition for Writ of Mandamus, or, in the Alternative, for Writs of Prohibition and Mandamus 3

A. Opinions Below 4

B. Jurisdiction 5

C. Questions Presented 5

D. Constitutional Provisions and Statutes Involved 7

E. Concise Statement of the Case 15

F. Reasons why Writs should Issue 25

Index To Appendices

Page

Appendix "A" - Complaint filed in United States District Court for Eastern District of Michigan, Southern Division in Cause entitled below (Filed, Jan. 14, 1957) 1a

Appendix "A" attached to Complaint filed in United States District Court in Cause of William W. Voisine et al., v. John W. Conlin, G. Mennen Williams, Governor, et al. Being copy of Warrant for arrest of William W. Voisine, et al., issued by Theodore R. Bohn, Judge of Circuit Court for the county of Wayne, Michigan (Dated, Oct. 17, 1956) 26a

Appendix "B" attached to Complaint filed in United States District Court in Cause of William W. Voisine et al., v. John W. Conlin, G. Mennen Williams, Governor, et al.:

a. Notice of Hearing on charges of malfeasance in office against William W. Voisine, Mayor of the City of Ecorse, Wayne county, Michigan.

b. Copy of such charges of malfeasance, attached thereto.

c. Copy of Order of Governor of the State of Michigan, appointing Judge of Probate to hear such charges [attached to Notice of Hearing] 36a

Page

Appendix "C" attached to Complaint filed in United States District Court in Cause of William W. Voisine et al., v. John W. Conlin, G. Mennen Williams, Governor, et al: Information filed in the Circuit Court for the County of Wayne in the cause of People of the State of Michigan v. William W. Voisine, et al. (Filed, Dec. 21, 1956) 50a

Appendix "B" - Notice of Motion for Preliminary Injunction and for formation of Three-Judge Court, filed in United States District Court in Cause of William W. Voisine, et al. v. John W. Conlin, G. Mennen Williams, Governor, et al (Filed with Complaint, Jan. 14, 1957) 58a

Appendix "C" - Temporary Restraining Order Without Notice, issued by District Judge Theodore Levin upon filing Complaint in cause of William W. Voisine et al. v. John W. Conlin, G. Mennen Williams, et al. (Filed and entered, Jan. 14, 1957) 62a

Appendix "C" - Transcript of Conference at Chambers of District Judge Theodore Levin, in Cause of William W. Voisine, et al. v. John W. Conlin, G. Mennen Williams, et al. (Jan. 15, 1957) 64a

Appendix "E" - Defendants' Answer to Complaint in cause of William W. Voisine et al. v. John W. Conlin, G. Mennen Williams, Governor, filed in United States District Court (Filed, Jan. 22, 1957) 66a

Page

Appendix "I", Attached to Answer of Defendants filed in United States District Court in cause of William W. Voisine, et al. v. John W. Conlin, G. Mennen Williams, Governor, et al. 82a

Appendix "F" - Defendants' Motion to Dismiss Complaint, filed in United States District Court in cause of William W. Voisine et al. v. John W. Conlin, G. Mennen Williams, Governor, et al (Filed, Jan. 22, 1957) 86a

Appendix "G" - Reply of Plaintiff William W. Voisine, to Defendants' Motion to Dismiss, filed in United States District Court in Cause of William W. Voisine et al. v. John W. Conlin, G. Mennen Williams, Governor, et al. (Filed, Jan. 29, 1957) 90a

Appendix "H" - Amended Order holding in Abeyance the Determination of Questions submitted until Determination of Criminal Trials, or until further Order of Court, and continuing in effect Temporary Restraining Order 92a

Appendix "I" - Defendants' Motion to dissolve Temporary Restraining Order or, in the Alternative, to pass on Defendants' Motion to Dismiss Complaint, filed in United States District Court in Cause of William W. Voisine et al. v. John W. Conlin, G. Mennen Williams, Governor, et al. (Filed, Feb. 28, 1957) 94a

Page

Appendix "J" - Answer of William W. Voisine to Motion to dissolve Temporary Restraining Order or, in the Alternative, to pass on Defendants' Motion to Dismiss Complaint, Supporting Affidavits thereto attached (Filed, March 11, 1957) 108a

Appendix "K" - Order of Three-Judge District Court denying Motion to dissolve Temporary Restraining Order or, in the Alternative, to pass on Defendants' Motion to Dismiss (Filed and entered, April 9, 1957) 133a

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1956

No. Misc.

G. MENNEN WILLIAMS, Governor of the State of Michigan,

- and -

THOMAS M. KAVANAGH, Attorney General of the State of Michigan,

Petitioners,

v.

HONORABLE CHARLES C. SIMONS, Chief Judge, United States Court of Appeals for the Sixth Circuit,

HONORABLE ARTHUR F. LEDERLE, Chief Judge,

- and -

HONORABLE THEODORE LEVIN, Judge of the United States District Court for the Eastern District of Michigan, Southern Division, together forming a Three-Judge United States District Court constituted under 28 U.S.C. § 2284, pursuant to 28 U.S.C. § 2281,

Respondents.

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS, OR, IN THE ALTERNATIVE, FOR WRITS OF PROHIBITION AND MANDAMUS

The petitioners move the Court for leave to file the annexed petition for a writ of mandamus, or, in the alterna-

tive, for writs of prohibition and mandamus; and further move that an order and rule be entered directing the Honorable The United States District Court for the Eastern District of Michigan, Southern Division, and the Honorable Charles C. Simons, Chief Judge, United States Court of Appeals for the Sixth Circuit, the Honorable Arthur F. Lederle, Chief Judge and the Honorable Theodore Levin, Judge of the United States District Court for the Eastern District of Michigan, Southern Division, together forming a Three-Judge United States District Court constituted under 28 U.S.C. § 2284 pursuant to 28 U.S.C. § 2281, to show cause why a writ of mandamus, or in the alternative, writs of prohibition and mandamus, should not be issued against them in accordance with the prayer of said petition, and why your petitioners should not have such other and further relief in the premises as may be just and meet.

Thomas M. Kavanagh
Attorney General of the State of Michigan

Edmund E. Shepherd
Solicitor General of the State of Michigan

Counsel for Petitioners
The Capitol, Lansing 2, Mich.

PETITION FOR WRIT OF MANDAMUS, OR, IN THE ALTERNATIVE, FOR WRITS OF PROHIBITION AND MANDAMUS

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The Governor of the State of Michigan and the Attorney General thereof, petitioners herein, respectfully pray:

1. That a writ of mandamus issue from this Court to the Honorable Charles C. Simons, Chief Judge, United States Court of Appeals for the Sixth Circuit, the Honorable Arthur F. Lederle, Chief Judge, and the Honorable Theodore Levin, Judge, of the United States District Court for the Eastern District of Michigan, Southern Division, who together form a Three-Judge United States District Court constituted under 28 U.S.C. § 2284 pursuant to 28 U.S.C. § 2281, requiring them in Civil Action No. 16638 entitled

William W. Voisine, Francis Labadie,
Albert Buday, and Elmer Korn,
Complainants,

v.

John W. Conlin, G. Mennen Williams,
Theodore R. Bohn, and Thomas M. Kavanagh,
Defendants,

forthwith to decide two pending motions filed on the 14th and 22nd days of January, respectively, to wit: (a) the motion of complainants aforesaid for a preliminary injunction, and (b) the motion of defendants [petitioners herein] to dismiss the complaint filed in said cause against them and others.

2. Or, since they have not within a reasonable time decided the important constitutional questions involved in such motions, but have ordered the entire matter held in abeyance indefinitely, that writs of prohibition and mandamus issue from this Court to the respondent Judges directing them to desist and refrain from proceeding further in the cause and to vacate and set aside the temporary restraining order issued on the 14th day of January, 1957 which has the full force and effect of hindering the Governor of the State of Michigan in performance of executive duties required of him by the Constitution and laws of the State with respect to the removal for cause of elected public officers found by him after due notice and hearing to be guilty of official misconduct.[1]

And petitioners respectfully show as follows:

A

Opinions Below

No opinion on the merits of the cause, reported or otherwise, has so far been expressed, handed down, or filed by the respondent Judges who constitute the Three-Judge United States District Court aforesaid.

---

[1]

Mich. Const. Art. IX, § 8; Mich. Election Law, Pub. Acts 1954, No. 116, § 397 [Comp. Laws 1948, Mason's 1954 Supp. § 169.327 (Mich. Stat. Ann. 1956 Rev. Vol. 5, § 6.1327; Rev. Stat. Mich. 1846, Ch. 15, §§ 7, 8, 9, and 10 [Comp. Laws 1948, §§ 201.7 to 201.10 (Mich. Stat. Ann. 1956 Rev. Vol. 5, §§ 6.697 to 6.700)]; Mich. Code of Crim. Pro., Ch. VII, § 4 [Comp. Laws 1948, Mason's 1954 Supp. § 767.4 (Mich. Stat. Ann. 1954 Rev. Vol. 25, § 28.944)].

B

Jurisdiction

The writs for which we pray are authorized by 28 U.S.C. § 1651 (a), and are deemed necessary and appropriate in aid of this Court's appellate jurisdiction. Only when the three-judge court below, formed pursuant to 28 U.S.C. §§ 2281, 2284, either grants or denies the pending motion for temporary injunction, or grants or denies the pending motion to dismiss the complaint, can the appellate jurisdiction of this Court be invoked pursuant to 28 U.S.C. § 1253. In our view, no remedy by way of appeal or otherwise is available in any other Court.

C

Questions Presented

In a civil action invoking jurisdiction of the United States District Court for the Eastern District of Michigan by virtue of Art. III, § 2 of the Constitution of the United States and §§ 2201, 2281, 2283 and 2284, Title 28 United States Code, the mayor of a Michigan municipality and members of its council, as complainants, sought both an interlocutory and permanent injunction to restrain the Governor of the State, the Attorney General thereof, a circuit judge and a judge of probate, from enforcing or executing certain statutes of the State which they challenged as unconstitutional on Federal grounds and which provided for the removal for cause of elected public officers found by the Governor, after due notice and a hearing before a judge of probate, to be guilty of acts of misfeasance, malfeasance and nonfeasance, in this case on charges

in writing laid before the Governor by a circuit judge who had conducted an investigation pursuant to one of the statutes in question [sometimes called Michigan's "One-Man Grand Jury Law"] and had at the same time issued warrants for the arrest of complainants on criminal charges involving venality. A District Judge issued a temporary restraining order hindering the Governor in the performance of his duty in the premises. A three-judge court, duly convened, heard complainants' motion for a temporary injunction and defendants' motion to dismiss the complaint on jurisdictional grounds. After full argument and submission of briefs, the three judge court failed to decide any of the constitutional questions presented, and failed to decide the motions which are still pending in the cause. In lieu thereof, the Court entered an order holding in abeyance determination of the questions submitted until termination of the said criminal trials or until the further order of the court, "the restraining order heretofore issued shall remain in full force and effect." Thereafter the Court denied defendants' motion to dissolve the temporary restraining order, or, in the alternative, to pass upon their motion to dismiss. The criminal cases have not been tried nor will they in all probability be heard for several months. Meanwhile, all proceedings to determine whether these public officers should be removed from office for the public good, are restrained.

1. Should this Court issue its writ of mandamus to compel members of the three-judge court to decide such pending motions?

2. In the alternative, in view of the peculiar circumstances, should an appropriate writ issue to direct the three-judge court to dissolve said restraining order?

D

Constitutional Provisions and Statutes Involved

Federal

1. In the complaint filed in the court below, complainants invoked Article I, § 10, Article III, § 2, Article VI, § 2, and the 5th, 6th and 14th Amendments of the Constitution of the United States but since they are published at length therein they need not be repeated.

2. The complaint also cited 28 U.S.C. §§ 2201, 2281, 2283 and 2284, which provide:

"2201. Creation of remedy

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such. June 25, 1948, c. 646, 62 Stat. 964, amended May 24, 1949, c. 139, § 111, 63 Stat. 105."

"2281. Injunction against enforcement of State statute; three-judge court required

An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be

granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title. June 25, 1948, c. 646, 62 Stat. 968."

"2283. Stay of State court proceedings

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction or to protect or effectuate its judgments. June 25, 1948, c. 646, 62 Stat. 968."

"§ 2284. Three-judge district court; composition; procedure

In any action or proceeding required by Act of Congress to be heard and determined by a district court of three judges the composition and procedure of the court, except as otherwise provided by law, shall be as follows:

(1) The district judge to whom the application for injunction or other relief is presented shall constitute one member of such court. On the filing of the application, he shall immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. Such judges shall serve as members of the court to hear and determine the action or proceeding.

(2) If the action involves the enforcement, operation or execution of State statutes or State administrative orders, at least five days notice of the hearing

shall be given to the governor and attorney general of the State.

If the action involves the enforcement, operation or execution of an Act of Congress or an order of any department or agency of the United States, at least five days' notice of the hearing shall be given to the Attorney General of the United States, to the United States attorney for the district, and to such other persons as may be defendants.

Such notice shall be given by registered mail by the clerk, and shall be complete on the mailing thereof.

(3) In any such case in which an application for an interlocutory injunction is made, the district judge to whom the application is made may, at any time, grant a temporary restraining order to prevent irreparable damage. The order, unless previously revoked by the district judge, shall remain in force only until the hearing and determination by the full court. It shall contain a specific finding, based upon evidence submitted to such judge and identified by reference thereto, that specified irreparable damage will result if the order is not granted.

(4) In any such case the application shall be given precedence and assigned for a hearing at the earliest practicable day. Two judges must concur in granting the application.

(5) Any one of the three judges of the court may perform all functions, conduct all proceedings except the trial, and enter all orders required or permitted by the rules of civil procedure. A single judge shall not appoint a master or order a reference, or hear and

determine any application for an interlocutory injunction or motion to vacate the same, or dismiss the action, or enter a summary or final judgment. The action of a single judge shall be reviewable by the full court at any time before final hearing.

A district court of three judges shall, before final hearing, stay any action pending therein to enjoin, suspend or restrain the enforcement or execution of a State statute or order thereunder, whenever it appears that a State court of competent jurisdiction has stayed proceedings under such statute or order pending the determination in such State court of an action to enforce the same. If the action in the State court is not prosecuted diligently and in good faith, the district court of three judges may vacate its stay after hearing upon ten days notice served upon the attorney general of the State. June 25, 1948, c. 646, 62 Stat. 965."

3. In our jurisdictional statement, *supra*, we have cited 28 U.S.C. § 1651 (a) which provides as follows:

"(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law. . ."

State

1. The Michigan State Constitution, Article IX, § 8, provides for the removal of municipal officers in the following terms:

"Sec. 8. Any officer elected by a county, city, village, township or school district may be removed from office in such manner and for such cause as shall be prescribed by law."

2. The Michigan legislature has implemented this provision of the State Constitution by enacting § 327 of the Michigan Election Law,[2] which provides as follows:

"SEC. 327. The governor shall remove all city officers chosen by the electors of any city or any ward or voting district thereof, when he shall be satisfied from sufficient evidence submitted to him, as hereinafter provided, that such officer has been guilty of official misconduct, or of wilful neglect of duty, or of extortion, or habitual drunkenness or has been convicted of being drunk, or whenever it shall appear by a certified copy of the judgment of a court of record of this state that such officer, after his election or appointment, shall have been convicted of a felony; but the governor shall take no action upon any such charges made to him against any such officer until the same shall have been exhibited to him in writing, verified by the affidavit of the party making them, that he believes the charges to be true. But no such officer shall be removed for such misconduct or neglect until charges thereof shall have been exhibited to the governor as above provided and a copy of the same served on such officer and an opportunity given him of being heard in his defense: Provided, That the service of such charges upon the person or persons complained against shall be made by handing to such person or persons a copy of such charges, together with all affidavits or exhibits which may be attached to the original petition if such person or persons can be found; and if not, by leaving a copy at the last place of residence of such person or persons, with some person of suitable age,

[2] Pub. Act Mich. 1954, No. 116, § 397 [Comp. Laws 1948, Mason's 1954 Supp. § 169.327 (Mich. Stat. Ann. 1956 Rev. Vol. 5, § 6.1327)].

if such person can be found; and if not, by posting it in some conspicious place upon his last known place of residence. No officer who has been removed in accordance with the provisions of this section shall be eligible to election or appointment to any office for a period of 3 years from the date of such removal."

The foregoing section was derived from § 6 of Chapter 15 of the Revised Statutes of 1846, as amended, which was repealed by the 1954 Election Law. The legislature, however, has retained §§ 7, 8, 9 and 10 of Chapter 15, *supra*,[3] to map the procedure which must be followed by the Governor and others in such a removal inquiry. Those sections, in harmony with the Due Process Clause, provide as follows:

"SEC. 7. The governor may direct the attorney general or the prosecuting attorney of the county in which such officer may be, unless such prosecuting attorney be the officer charged, to conduct and inquire into the charges made, and the said attorney general or such prosecuting attorney shall thereupon give at least eight [8] days' notice to the officer accused of the time and place at which he will proceed to the examination of witnesses in relation to such charges before some circuit court commissioner or judge of probate for the same county, or any judge of probate who may be appointed by the governor for such purpose, and he shall also, at the time of giving such notice, serve upon the officer accused a copy of such charges: Provided, however, That if the judge of probate so appointed resides other than in the

[3]

Being Mich. Comp. Laws 1948, §§ 201.7 to 201.10 [Mich. Stat. Ann. 1956 Rev. Vol. 5, §§ 6.697 to 6.700].

county in which the accused resides, such judge of probate shall be paid by such county the sum of ten [10] dollars per day and expenses for time actually used in such hearing.

"SEC. 8. The attorney general or prosecuting attorney may issue subpoenas, signed by him with his name of office, to compel the attendance of any witness whom he shall deem material, before said circuit court commissioner or judge of probate, and such commissioner or judge of probate shall have the same power to enforce obedience to such subpoena by attachment, and to commit any person who shall refuse to be sworn or to answer, as the circuit court would have in a civil cause pending therein, and the fees of such witnesses shall be the same as in civil cases, and shall be a charge against the county.

"SEC. 9. On the application of the officer accused to the prosecuting attorney, or to any justice of the peace, he shall be entitled to the like process of subpoena, obedience to which may be enforced in the same manner, as provided in the last preceding section, by the commissioner or judge of probate before whom the witness may be conducted.

"SEC. 10. At the time and place there specified in the notice, the commissioner or judge of probate, before whom such inquiry shall be conducted, shall proceed to take the testimony of the witnesses produced before him by the attorney general or prosecuting attorney and by the officer accused, which witnesses shall be sworn by such commissioner or judge of probate and every answer given by them to any question, which either party shall require to be reduced to writing, shall be taken stenographically or in writing under

the direction of such commissioner or judge of probate, and such testimony shall be certified by the commissioner or judge of probate, taking the same to be a correct transcript of all of the testimony so taken in said hearing. Such testimony so taken and certified shall be delivered by said commissioner or judge of probate to such prosecuting attorney or attorney general, who shall transmit the same with a summary of such testimony to the governor, and the fees of the commissioner or other officer for the performance of such services shall be a charge against the county."

3. Also involved in the cause pending before the Three-Judge Court are certain provisions of the Michigan Code of Criminal Procedure, Chapter VII, §§ 3 and 4 [Mich. Comp. Laws 1948, §§ 767.3, 767.4 (Mich. Stat. Ann. 1954 Rev. § 28.943, 28.944)], which together with others have at times been termed Michigan's "One-Man Grand Jury Law."[1] Since these sections appear in paragraphs 14 and 15 of the complaint, which challenges their constitutional validity, it suffices at this point to say that § 4, *supra*, includes the following:

". . . And if upon such inquiry the judge shall find from the evidence that there is probable cause to believe that any public officer, elective or appointive and subject to removal by law, has been guilty of misfeasance or malfeasance in office or wilful neglect of duty or of any other offense prescribed as a ground of re-

---

[1] The institution created by these sections of the Code is not in any sense a "grand jury." The judicial officer who conducts the inquiry is merely a glorified justice of the peace or magistrate authorized to issue warrants authorizing arrest of those accused of crime following investigation and examination of witnesses. No indictment follows the statutory proceedings.

moval, the said judge shall make a written finding setting up the offense so found and shall serve said finding upon the public officer, public board or body having jurisdiction under the law to conduct removal proceedings against said officer. And said finding shall be a sufficient complaint as a basis for removal of said officer and the public officer, public board or public body having jurisdiction of removal proceedings against said officer shall proceed in the method prescribed by law for a hearing and determination of said charges."

E

Concise Statement of the Case[5]

First

a. On January 14, 1957 when their complaint (1a-24a) was filed in the court below, William W. Voisine, Mayor of the City of Ecorse, Wayne County, Michigan (4a) and Francis Labadie, Albert Buday, and Elmer Korn, members of that city's council, were facing prosecution in circuit court on informations charging criminal offenses involving venality. Voisine, Labadie and Buday were charged (52a-57a) with a corrupt conspiracy to obstruct justice,[6] while Korn was accused of accepting a bribe.[7]

---

[5]

Unless otherwise plainly indicated, numbers in parentheses refer to pages of the Appendix to this petition (1a-134a).

[6]

In Michigan a common-law offense punishable as a felony, Mich. Penal Code, § 505 [Mich. Comp. Laws, § 750.505, (Mich. Stat. Ann. 1954 Rev. Vol. 25, § 28.773)].

[7]

Mich. Penal Code, § 118 [Comp. Laws 1948, § 750.118 (Mich. Stat. Ann. § 28.505)].

b. Such criminal proceedings were instituted when a circuit judge, having conducted an investigation pursuant to §§ 3 and 4 of Chapter VII, the Michigan Code of Criminal Procedure, *supra*, issued warrants (e.g., 27a) for the arrest of these public officers (complainants below). The magistrate, in further compliance with the Code of Criminal Procedure, Chap. VII, § 4, *supra*, transmitted to the Governor of Michigan written findings (38a-46a) that Voisine, Labadie, Buday and Korn as public officers had committed certain specified acts of misfeasance, malfeasance and nonfeasance; and he recommended (45a) that the Governor take all necessary legal steps to remove them from their respective executive and legislative offices.

c. A true copy of such findings was duly served on each officer, together with a notice in writing (37a-38a) apprising him that in accordance with Michigan law,[8] the Governor had directed the Attorney General to inquire into the charges aforesaid; that he had appointed a judge of probate to hear them and, having done so, to certify and transmit to the Governor a correct transcript of all testimony taken; and, further, that such hearing would be held at a designated place in the city of Detroit on the 13th day of November, 1956 at 10:00 a.m. Each was further notified (33a) he might be present in person and by counsel for the purpose of cross-examining witnesses, presenting evidence and making such defenses as he might choose.

d. Following an adjournment upon request of defense counsel (13a), the accused officers filed with the probate judge motions to dismiss and their counsel made strenuous objection to proceeding to a hearing on the removal charges

---

[8]

Mich. Rev. Stat. 1846, Chapter 15, § 7, as amended [Mich. Comp. Laws 1948, § 201.7 (Mich. Stat. Ann. 1956 Rev. Vol. 5, § 6.697)].

prior to being heard in the criminal case (14a) mainly because the removal statute amounted to a bill of attainder and put the accused twice in jeopardy. Voisine filed in the removal proceedings a reply and motion which, as alleged in the complaint, filed in the United States District Court (15a), "raised almost each and all constitutional objections to the removal proceedings, and more particularly the situation that the statute provides that the Attorney General . . . shall furnish to the complainant subpoenas," which right, it was further said, was denied him.

e. Moreover, as further alleged in the complaint, paragraph 32 (16a), lengthy affidavits and motions were filed in behalf of all complainants (the accused officers) "indicating and setting forth that they would not be able to obtain witnesses in their own behalf and defense" while the grand jury, so-called, was in session, and while other defendants who might be necessary witnesses for the complainants (accused officers) in defense of the removal proceedings were "under indictment."

f. Furthermore, or so the accused public officers aver (par. 33, 16a) in their complaint, because the charges against them in the removal proceedings were vague, general and indefinite and did not apprise them of the specific nature thereof, the accused made motions for a more specific bill of particulars which was denied by the probate judge.

g. Again, in the removal proceedings, verified documents were filed (16a, par. 34) to the effect that the accused would not be able to obtain witnesses to testify for and in their behalf because said witnesses were "under indictment" in other proceedings and, therefore, could not be compelled to take the stand, as the result of which due process would not be compiled with, but the probate judge ruled he had

no authority except to continue the hearing "unless the proceedings were stopped by a court other than his own."

b. Responding to such motions and objections, the judge of probate, on January 9, 1957, ruled (16a-17a, par. 35) that the proceedings before the Governor were quasi-judicial and not ministerial, and it is apparent that he overruled all of the pending motions, including one for further continuance.

Second

a. Shortly thereafter, on the 14th day of January, 1957, the day before they were to be arraigned in circuit court on the criminal charges aforesaid (17a), and without any attempt to exhaust whatever State remedies might be available, the accused filed their complaint (Appendix A, 1a-24a), with appendices thereto attached (26a-57a), in the United States Court for the Eastern District of Michigan, Southern Division, naming as defendants John W. Conlin, judge of probate assigned to hear the removal charges against them, G. Mennen Williams, Governor of the State, Theodore R. Bohn, Judge of the Third Judicial Circuit of Michigan, who had issued the warrants and made the findings in question, and Thomas M. Kavanagh, the Attorney General of Michigan (1a et seq.).

b. In said complaint, an attack was launched against the several Michigan statutes scheduled in Part "D" of this petition, *ante*, on the asserted ground that as applied to complainants both in the criminal and removal proceedings, such laws of Michigan had violated nearly every known fundamental right preserved by the Constitution of the United States and its several amendments comprising the Bill of Rights. These included, among others, the constitutional questions raised by the complainants in the

removal proceedings before the judge of probate assigned by the Governor to perform that duty.

c. Since such constitutional objections to the statutes here challenged are set forth with great particularity in the complaint, and need not be repeated, we cite the following merely by way of illustration:

1. Attacking, first, the validity of the Michigan Code of Criminal Procedure, Chap. VII, §§ 3 and 4,[9] as applied to the criminal proceedings instituted by a circuit judge conducting an investigation pursuant thereto, it is claimed

(a) that § 4 thereof constitutes a bill of attainder in violation of Art. I, § 10 of the Constitution of the United States (10a-11a, par. 18);

(b) that by virtue of the institution of removal proceedings against them, this section of the Code compels the accused to become a witness against himself in violation of the 5th Amendment (11a, par. 20);

(c) that such sections deny the constitutional right to a speedy trial by an impartial jury since the complainants are being forced to a hearing in the removal proceedings prior to trial on the pending criminal charges (11a-12a, par. 21) in violation of the 6th Amendment; and

(d) that thus they are denied due process of law (12a, par. 22) contrary to the 14th Amendment.

---

[9] These and other sections comprise what complainants persistently termed the Michigan One-Man Grand Jury Law.

2. Questioning the constitutionality of such sections of the Code as applied to the removal proceedings, it is claimed

(a) that since § 4 permits the "grand juror" to "indict" a person for crime, then to institute removal proceedings before the Governor, it takes from the hands of the courts of the State and the Federal courts, judicial power vested in them by Article III, § 2 of the Constitution (11a, par. 19);

(b) that in event a public officer should be removed by the Governor, the section affords no remedy to review his orders (15a, par. 30);

(c) that these sections actually confer upon the Governor and his representatives, judicial power to deny a person charged with crime a trial by jury in violation of the 6th Amendment (17a, par. 36);

(d) that the removal proceedings would compel complainants and witnesses in their behalf to take the witness stand and be subjected to cross-examination and possible self-incrimination prior to trial of the criminal charges (17a, par. 37);[10]

(e) that constitutional rights are being jeopardized since the Governor and his aides (defendants below) are attempting "with the greatest zeal and ardor to remove the four complainants . . . from their public offices . . . before they have had any opportunity whatsoever to proceed with or meet the trial of the criminal charges against them" (18a-19a, par. 41); and

---

[10] Citing Slochower v. Board of Higher Education, 351 U.S. 551.

(f) That the Governor and his representatives seek, by removal proceedings, "to . . . take away from said complainants their political, private and property rights in the form of their reputations prior to the time that they are able to proceed to a trial in the criminal proceeding" (19a, par. 44).

Third

Complainants' prayers for relief (21a-24a) may be summarized as follows:

a. For an order restraining the Governor and others named as defendants from proceeding further with such removal proceedings until the other matters of relief might be determined by the Court, because of the great irreparable injury, loss and damage that would result to complainants "between the date of the filing of this . . . complaint and of the return date of the order to show cause for a temporary injunction and the motion for the appointment of a three-judge court" (Prayer 4, 21a-22a).

b. It was averred in Prayer 5 (22a) that said temporary restraining order was merely for the purpose of preserving the status quo "until and when the normal judicial processes of this court can be properly invoked to determine whether or not said complainants have material rights to protect."

c. That a three-judge court be organized pursuant to 28 U.S.C. § 2284 and Rule 65 of the Federal Rules of Civil Procedure, "for the purpose of determining that said complainants are entitled to an interlocutory injunction . . ." (Prayer 6, 22a).

d. That upon final hearing a permanent injunction be granted determining in effect that the statutes in question are unconstitutional and void, that the removal proceedings are likewise invalid, and that the warrant and information in the criminal proceedings be determined to have arisen out of a completely void and unconstitutional proceeding in direct violation of the Federal Constitution and decisions of this Court..

Fourth

a. Upon filing the complaint, counsel gave notice (Appendix B, 58a) of motion for a preliminary injunction and for formation of a three-judge court.

b. At the same time, the Honorable Theodore Levin, United States District Judge, issued an order (Appendix C, 62a; 63a) without notice, upon motion of counsel for complainants, restraining the Governor of the State of Michigan, the probate judge and the circuit judge aforesaid, as well as the Attorney General, until January 21, 1957, or until such further date as the court might determine, from "in any manner continuing with the removal and/or ouster proceedings" until the matters set forth in said bill of complaint filed herein may be determined by the court or by a three-judge court which might be organized in accordance with the prayer for relief . . . (63a). The order further provided:

> "This temporary restraining order without notice is issued by this court on the 14th day of January, A.D. 1957, at 12:10 o'clock p.m. in pursuance to Federal Rules of Civil Procedure No. 65, and shall expire 12:00 o'clock noon on Jan. 21, 1957, unless the same is renewed . . ."

c. On the following day, Jan. 15, 1957 a conference was held at chambers of the District Judge at which the Deputy Attorney General and an Assistant Attorney General were present (Appendix D, 64a, 65a). The District Judge announced that a three-judge court had been organized by the Chief Judge of the United States Court of Appeals for the 6th Circuit, who had designated Jan. 29, 1957 at 10:00 a.m. for the hearing. The Deputy Attorney General and the Assistant stated they were agreeable that the restraining order which had been issued by the District Judge should "remain in effect until the matter is disposed of by the three-judge constitutional court."

Fifth

a. On the 22nd day of January, 1957 the defendants to the complaint, the Governor of the State of Michigan and others, filed their answer (Appendix E, 66a-80a) denying the equities of the complaint and setting forth six affirmative defenses and special matters (79a, 80a) bearing on the Court's jurisdiction.

b. At the same time, defense counsel filed a motion to dismiss (Appendix F, 86a-89a) the complaint on similar jurisdictional grounds. A reply (Appendix G, 90a, 91a) having been filed by complainants, the motions came on to be heard January 29, 1957 when the legal questions involved were fully argued, briefs were presented, and the two motions were taken under advisement.

c. On the 1st day of February, 1957 the three-judge court entered an order (Appendix H, 92a), which reads as follows:

> "The application for a temporary injunction and the motion to dismiss the complaint having come on to be heard, and

It appearing that the plaintiffs have been informed against and are now subject to criminal proceedings and removal proceedings arising out of a one-man grand jury inquiry, and

It appearing that the plaintiffs may forthwith be tried in the said criminal trials and that upon determination of the said criminal trials constitutional questions set out in the complaint may then become moot,

And it appearing that the plaintiffs may be prejudiced in the pending criminal proceedings by the investigation of the State in the removal proceedings, therefore,

This Court will hold in abeyance the determination of the questions submitted until the termination of the said criminal trials or until the further order of this Court, and pending such determination by this Court the restraining order heretofore issued shall remain in full force and effect."

d. Thereafter, on Feb. 28, the Attorney General filed a motion (Appendix I, 94a-95a), supported by an affidavit of his deputy (96a-98a), to dissolve the temporary restraining order or, in the alternative, to pass upon defendants' motion to dismiss, assigning among others the following reasons, quickly summarized:

(1) the Court had no legal authority to refuse to decide such motion and enter its order continuing the temporary restraining order in full force;

(2) non-action of the Court on such motion, coupled with its restraining order results in an unconstitutional interference in the political affairs and responsi-

bilities of the Governor of the State of Michigan, viz., the disciplinary authority of the Governor over municipal and local public officers; and

(3) that such interference with the duties and prerogatives of the Governor of the State is inimical to the public good and interest because the Governor is thereby prevented from determining, after hearing, whether public officials should remain in office and be allowed to conduct the public affairs of the municipality.

e. On the 9th day of April, 1957 the three-judge court entered an order (Appendix K, 133a-134a) denying the motion aforesaid on the ground that, treating it as a motion for rehearing, it presented nothing new. And, finally, since its entry, the three-judge court has refrained from deciding any of the important jurisdictional and constitutional questions. The temporary restraining order issued by a District Judge remains in full force and effect.

F

Reasons why Writs should Issue

First: Since mandamus is sought to direct a three-judge court to decide important judicial questions, and since no interlocutory or permanent injunction has been granted or denied, it seems plain that the relief sought is not available by way of appeal, 28 U.S.C. § 1253, to any court including the United States Court of Appeals for the 6th Circuit.[11]

---

[11] Query v. United States, 316 U.S. 486.

The writs, we respectfully submit, are appropriate under 28 U.S.C. § 1651 because in a case of great public importance the court below has for an unreasonable length of time refrained from performing the judicial function of granting or denying the interlocutory injunction sought by complainants, or denying or granting the defendants' motion to dismiss the complaint, meanwhile continuing in full force and effect a temporary restraining order issued by a District Judge.[12]

Unlike *Pary v. United States*, 351 U.S. 513, this is a case wherein a court has refused to exercise its authority, and appellate review by this Court will be defeated if writs do not issue. And while the All Writs Act is meant to be used only in exceptional cases where there is a clear abuse of discretion or usurpation of judicial power,[13] we respectfully submit this is one of those rare, extraordinary occasions for which such writs are reserved,[14] because, in this particular instance, the Governor of a sovereign State, as the result of inaction on the part of the court, is hampered in the performance of a clear duty laid upon him by Michigan's Constitution and laws.

Second: The constitutional objections to the Michigan laws in question, raised in the complaint, possess little if any merit and the questions presented should be quickly decided.

---

[12]

Ex Parte United States, 287 U.S. 241; Ex Parte Kumezo Kamato, 317 U.S. 69; Ex Parte Peru, 318 U.S. 578; Roche v. Evaporated Milk Association, 319 U.S. 21.

[13]

Bankers Life & Casualty Co. v. Holland, Chief Judge, 346 U.S. 379.

[14]

Cf. Ex Parte Fahey, 332 U.S. 258.

a. It is extremely doubtful that a Federal court of equity, in any circumstances, posseses power to retain State proceedings, already begun, for the removal of public officers deemed recreant in their trust.[15] And this Court has repeatedly determined that an unlawful denial by state action of a right to state political office is not a denial of a right to property or of liberty secured by the Due Process Clause.[16]

By way of analogy, while Federal courts of equity may enjoin State criminal proceedings under a statute alleged to be unconstitutional when their prevention is essential to the safeguarding of rights of property, and when the circumstances are exceptional and the danger of irreparable loss is both great and immediate, such an injunction cannot be supported in so far as it embraces proceedings pending in the State criminal court which were instituted before the case was begun.[17] This, we think, should be applied to the removal proceedings which in this instance were instituted before action was begun in the court below to enjoin them.

b. So, also this Court has held that in the absence of a clear showing of necessity, a Federal court of equity will not restrain the institution of a criminal prosecution in a state court [a fortiori, here, the continuance of removal proceedings before a Governor] upon the ground that the

[15]

In re Sawyer, 124 U.S. 200; White v. Berry, 171 U.S. 366; Harkrader v. Wadley, 172 U.S. 148, 165; Walton v. House of Representatives, 265 U.S. 487.

[16]

Taylor & Marshall v. Beckham, 178 U.S. 548; Cave v. Newell, 246 U.S. 650; Snowden v. Hughes, 321 U.S. 1, 7.

[17]

Cline v. Frink Dairy Co., 274 U.S. 445.

statute defining the offense violates the Federal Constitution, but will leave the party to set up the federal question in the state court and to his right of review in this Court.[18]

c. While its constitutional authority to confer power of removal of public officers upon the Governor can no longer be questioned,[19] the Michigan legislature may not; by any act, deprive a person of his right to hold an office to which he has been elected and whose duties he has assumed, except by due process of law, *Metevier v. Therrien*, 80 Mich. 187, 195. Hence it has followed that the laws of the State which map procedure in all such cases, afford the accused official all essentials of due process: *viz*, written specifications of the nature of the charges; due and timely notice of hearing before a judge of probate; opportunity to be represented by counsel; the right to appear in person or by counsel; the right to cross-examine witnesses who testify against the accused, and to adduce testimony on his own behalf.[20] And while an officer who has been removed may not obtain from the Michigan Supreme Court a writ of certiorari running directly to the Governor,[21] he may effectually

---

[18]

Spielman Motor Co. v. Dodge, 295 U.S. 89.

[19]

Clay v. Stuart, 74 Mich. 411; Metevier v. Therrien, 80 Mich. 187; Attorney General v. Jochim, 99 Mich. 358.

[20]

Rev. Stat. Mich. 1846, Chapter 15, §§ 7, 8, and 9 [Comp. Laws 1948, §§ 201.7-201.10 (Mich. Stat. Ann. 1956 Rev. §§ 6.697-6.700)].

[21]

Germaine v. Governor, 176 Mich. 585.

test the validity of such proceedings by way of *quo warranto*.[22]

When the complaint was filed in the court below, removal proceedings were already in progress before the probate judge to whom the Governor had assigned the duty of conducting a hearing, and the accused officers had been accorded all of the rights and privileges enumerated above. Moreover, counsel for the accused had filed and argued several motions which raised substantially the same constitutional questions and claims later presented to the United States District Court in the complaint. The Governor had not passed upon the merits of the case; and he had not entered an order ousting the complainants.[23]

d. At the same time, when the complaint was filed, counsel for the accused had taken all necessary steps to protect the constitutional rights of their clients, the accused public officers, by moving to quash the informations on the ground, inter alia, that the Michigan "One-man Grand Jury Law," so-called, under which warrants of arrest had issued, violated the Due Process Clause of the Fourteenth Amendment.

We respectfully submit that unless it can be said that Michigan no longer possesses sovereignty, that the complainants below should first exhaust all State remedies.

---

[22] In Michigan quo warranto lies to test the legality of the removal of a relator from a public office by the Governor and if he has not been accorded due process, in strict conformity to the statute, judgment of ouster against his successor will be entered. Metevier v. Therrien, 80 Mich. 187.

[23] It cannot be alleged with any degree of truth that Governor Williams, who is a man of undoubted integrity, has prejudged the charges against these public officers.

Since criminal prosecution had already been commenced by issuing warrants and was well under way, and since removal proceedings were in progress, the complainants, if aggrieved by conviction or removal, will have adequate State remedies by appeal from possible conviction, and, in event of affirmance, by petition to this Court for a writ of certiorari. Should they be removed from office by the Governor, much the same line of procedure lies open. In our view, and we respectfully submit it was never intended as a part of our system of federalism that an accused person against whom state criminal or removal proceedings have been instituted, may have free access to a Federal court of equity to determine in advance what the State courts should decide on constitutional questions.

e. It has been suggested by complainants that a hearing on removal charges in advance of trial of criminal accusations in the State court, will greatly prejudice them therein. We respectfully submit that if the accused's constitutional right to a fair and impartial trial on criminal charges in the state court is infringed by virtue of the removal proceedings, and this should manifestly appear, then, in such event, any conviction so obtained could be reversed by the Michigan Supreme Court on appeal or by this Court on certiorari. It is the State which must assume that risk.

WHEREFORE, petitioners respectfully pray that an order issue out of and under the seal of this Honorable Court directed to the respondent Judges named herein requiring them on a day certain to show cause why the writs prayed for in the opening paragraph of this petition should not be granted. And that the Court grant to peti-

tioners such other and further relief as may be deemed just and appropriate.

Respectfully submitted,

G. Mennen Williams
Governor of the State of Michigan.

Thomas M. Kavanagh
Attorney General of the State of Michigan

By Edmund E. Shepherd
Solicitor General of the State of Michigan

APPENDIX "A"

Complaint filed in United States District Court for Eastern District of Michigan, Southern Division in Cause entitled below:

(Filed, Jan. 14, 1957)

WILLIAM W. VOISINE, FRANCIS LABADIE, ALBERT BUDAY AND ELMER KORN, **Complainants,** **- vs -** **JOHN W. CONLIN, G. MENNEN WILLIAMS, THEODORE R. BOHN AND THOMAS M. KAVANAGH** **Defendants.**	**No. 16338**

COMPLAINT

Now comes William W. Voisine, Francis Labadie, Albert Buday and Elmer Korn, complainants herein, and for their cause of action state:

1. That this court has jurisdiction of the complainants and defendants herein named, and likewise has jurisdiction over the subject herein alleged and for the relief herein sought by virtue of 62 Statutes 986 (C. 646 June 25, 1948), Title 28 United States Code Annotated 2281, Title 28 Section 2283, United States Code Annotated and Title 28, Section 2284 of the United States Code Annotated and under 28 United States Code Annotated 2201, being Section 111, 63 Statutes 105 as Amended May 24, 1949, and Section 2 of Article III of the Constitution of the United States.

2. That this court has the further jurisdiction to grant the injunctive relief herein prayed for under Rule 65 of the Federal Rules of Civil Procedure, because of the unique irreparable damage and injury that will be done to the complainants herein unless said injunctive relief is granted by virtue of the facts hereinafter alleged.

3. That Section 10 of Article I of the Constitution of the United States provides as follows:

> "No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility."

4. That Section 2 of Article III of the Constitution of the United States provides as follows:

> "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."

5. That Section 2 of Article VI of the Constitution of the United States provides as follows:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

6. That Article V of the Amendments to the Constitution of the United States provides as follows:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

7. That Article VI of the Amendments to the Constitution of the United States provides as follows:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence."

8. That Article XIV of the Amendments to the Constitution of the United States provides as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

9. That the complainant herein, William W. Voisine, is the duly elected, qualified and acting Mayor of the City of Ecorse, County of Wayne and State of Michigan; and the other complainants, namely: Francis Labadie, Albert Buday and Elmer Korn, are part of the duly elected, qualified and acting members of the City Council of the City of Ecorse, Wayne County, Michigan.

10. That during the month of August, 1956, a majority of the Judges of the Third Judicial Circuit of the County of Wayne and State of Michigan, in pursuance of a petition filed with said court entitled:

> "In the Matter of the application of Thomas M. Kavanagh, Attorney General of the State of Michigan, and Gerald K. O'Brien, prosecuting attorney for the County of Wayne, for a judicial investigation concerning criminal offenses and unlawful practices in the Township of Taylor, the City of Ecorse, and other governmental units in the County of Wayne—Misc. No. 83258",

did subsequently enter an order appointing as a One-Man Grand Juror, the Honorable Theodore R. Bohn, defendant

herein, who is a Circuit Judge in and for the County of Wayne, and part of the Third Judicial Circuit of the State of Michigan.

11. That thereafter the Honorable Theodore R. Bohn, Wayne County Circuit Judge, acting as a One-Man Grand Juror, did surround himself with certain State Policemen, City Policemen, Assistant Attorneys General, and other persons which can be described as part of the One-Man Grand Jury wherein and whereby they commenced investigating alleged illegal practices in the City of Ecorse, County of Wayne and State of Michigan.

12. That subsequent thereto the complainants herein, together with all other persons from the City of Ecorse herein indicted in accordance with Appendix "A" attached hereto and made a part hereof, were subpoenaed in before said One-Man Grand Jury and without being advised of any of the constitutional rights as set forth in Paragraphs 3, 4, 5, 6, 7, 8 and 9 above, were questioned at great length pertaining to their own personal affairs in direct violation of Article V of the Amendment to the Constitution of the United States being Paragraph 7 hereinbefore quoted.

13. That each and all of the complainants herein and the other indictees named in Appendix "A" were compelled under threats of contempt or indictment to answer any and all questions propounded to them by the One-Man Grand Juror, or the staff of the One-Man Grand Juror, without regard to their Federal constitutional rights and without being advised that it was the particular witness or witnesses whom the Grand Jury sought to indict and not some other person or persons, all in violation of the constitutional rights hereinbefore named.

14. That subsequently, and on or about the middle of October 1956, the unique One-Man Grand Juror issued a warrant against the four above named complainants and the other indictees named therein by virtue of the provisions of Compiled Laws of 1948, Section 767.3, being Michigan Statutes Annotated 28.943, which provides as follows, to-wit:

> "Whenever by reason of the filing of any complaint, which may be upon information and belief, or upon the application of the prosecuting attorney or attorney general, any judge of a court of law and of record shall have probable cause to suspect that any crime, offense or misdemeanor shall have been committed within his jurisdiction, and that any persons may be able to give any material evidence respecting such suspected crime, offense or misdemeanor, such judge in his discretion may make an order directing that an inquiry be made into the matters relating to such complaint which order, or any amendment thereof, shall be specific to common intent of the scope of the inquiry to be conducted, and thereupon conduct such inquiry: Provided, That in any court having more than 1 judge such order and the designation of the judge to conduct the inquiry shall be made in accordance with the rules of such court. Thereupon such judge shall require such persons to attend before him as witnesses and answer such questions as such judge may require concerning any violation of law about which they may be questioned within the scope of the order; and the proceedings to summon such witness and to compel him to testify shall, as far as possible, be the same as proceedings to summon witnesses and compel their attendance and testimony, and such witnesses shall not receive any compensation or remuneration other than witness fees as paid witnesses in other criminal proceedings, and said witness

shall not be employed in any capacity by the judge or by any person connected with such inquiry, within the scope of the said inquiry being conducted. Whenever a subpoena shall be issued by the judge conducting such inquiry, commanding the appearance of a witness before such judge forthwith upon the service of such subpoena, and, following the service thereof, such witness arrives at the time and place stated in such subpoena, the judge so issuing the same shall be forthwith notified of such appearance by the officer serving the subpoena, and it shall thereupon be the duty of such judge forthwith to appear and take the testimony of such witness. Any person called before the grand jury shall at all times be entitled to legal counsel not involving delay and he may discuss fully with his counsel all matters relative to his part in the inquiry without being subject to a citation for contempt. All matters so revealed to the attorney shall be subject to the requirements of secrecy in section 4, and any revelation thereof by the attorney shall make him subject to punishment as provided in said section. No testimony shall be taken or given by any witness except in the presence of the judge.

Any judge, prosecuting attorney or special prosecuting attorney, or the attorney general participating in any inquiry under this section which continues more than 30 calendar days shall thereafter be disqualified from appointment or election to any office other than one held at the time of such inquiry: Provided, That such disqualification shall not extend more than 1 year from date of termination of such inquiry, as determined by final order of said judge entered prior to such date."

15. That other One-Man Grand Jury sections involved are Compiled Laws of 1948, Section 767.4, being Michigan

Statutes Annotated 28.944, which provides as follows, to-wit:

"If upon such inquiry the judge shall be satisfied that any offense has been committed and that there is probable cause to suspect any person or persons to be guilty thereof, he may cause the apprehension of such person or persons by proper process and, upon the return of such process served or executed, the judge having jurisdiction shall proceed with the case, matter or proceeding in like manner as upon formal complaint: Provided, That the judge conducting the inquiry under section 3 of this act shall be disqualified from acting as the examining magistrate in connection with the hearing on the complaint or indictment, or from presiding at any trial arising therefrom, or from hearing any motion to dismiss or quash any complaint or indictment, or from hearing any charge of contempt under section 5 hereof, except alleged contempt for neglect or refusal to appear in response to a summons or subpoena. And if upon such inquiry the judge shall find from the evidence that there is probable cause to believe that any public officer, elective or appointive and subject to removal by law, has been guilty of misfeasance or malfeasance in office or wilful neglect of duty or of any other offense prescribed as a ground of removal, the said judge shall make a written finding setting up the offense so found and shall serve said finding upon the public officer, public board or body having jurisdiction under the law to conduct removal proceedings against said officer. And said findings shall be a sufficient complaint as a basis for removal of said officer and the public officer, public board or public body having jurisdiction of removal proceedings against said officer shall proceed in the method prescribed by law for a hearing and determination of said

charges. Except in cases of prosecutions for contempt or perjury against witnesses who may have been summoned before the judge conducting such inquiry, or for the purpose of determining whether the testimony of a witness examined before such judge is consistent with or different from the testimony given by such witness before a court in any subsequent proceeding, or in cases of disciplinary action against attorneys and counselors in this state, any judge conducting such inquiry, any prosecuting attorney and other persons who may at the discretion of such judge be admitted to such inquiry, who shall while such inquiry or while in the services of such judge or after his services with such judge shall have been discontinued, utter or publish any statement pertaining to any information or evidence involved in any such inquiry, or who shall disclose the fact that any indictment for a felony has been found against any person not in custody or under recognizance, or who shall disclose that any person has been questioned or summoned in connection with any such inquiry, or who shall disclose or publish or cause to be published any of the proceedings of such inquiry otherwise than by issuing or executing processes prior to such indictment, or shall disclose, publish or cause to be published any comment, opinion or conclusions related thereto, shall be guilty of a misdemeanor punishable by imprisonment in the county jail not more than 1 year or by a fine of not less than $100.00 nor more than $1,000.00 or both such fine and imprisonment in the discretion of the court, and such offense when committed by a public officer shall also constitute malfeasance in office. Upon the termination of such inquiry if the judge shall make no presentment of crime or wrong-doing as to any person or persons whose apprehension or removal from office he has not so caused, he

may, in his discretion, with the consent of the person who may be named, file with the clerk of the county in which such inquiry has been conducted, a report of no finding of criminal guilt as to any person or persons involved in such inquiry, either as witness or otherwise whose involvement in such inquiry has become public.

No inquiry or proceeding hereunder shall continue longer than 6 months unless extended by specific order of said judge or his successor for an additional period not to exceed 6 months.

In the event any judge conducting such inquiry shall be unable to continue therein because of physical disability, disqualification, termination of office or death, the presiding circuit judge of Michigan shall appoint a successor."

16. That the unique Michigan One-Man Grand Jury Act commences with Compiled Laws 1948, 767.1, being known as Michigan Statutes Annotated 28.941 and continues and concludes with Compiled Laws of 1948, Section 767.6, the same being Michigan Statutes Annotated 28.946.

17. That the various sections purport to give the Michigan unique One-Man Grand Juror power to have complete secrecy of proceedings, to punish for contempt in case a witness should fail to appear, to subpoena and re-subpoena witnesses, to permit newspaper reporters to be confidential and privileged in respect to their communications with and to said One-Man Grand Juror among other powers in the Act so enumerated.

18. Complainants further charge that Compiled Laws 767.4, being Michigan Statutes Annotated 28.944, is void and unconstitutional in that it is in direct contravention of

the Constitution of the United States, in that it permits the unique One-Man Grand Juror to place in operation what is commonly referred to as a bill of attainder in violation of Section 10 of Article I of the Constitution of the United States.

19. Complainants further charge that said section permits and allows (commands) the unique One-Man Grand Juror to indict a person for a crime, then to institute removal proceedings before the Governor of the State of Michigan, thereby directly violating Section 2 of Article III of the Constitution of the United States in that said One-Man Grand Juror in said removal proceeding is taking from the hands of the Courts of the State of Michigan, or the Courts of the United States, the judicial power as is vested in them by virtue of Section 2 of Article III of the Constitution of the United States.

20. That the section of the Michigan unique One-Man Grand Jury Act hereinbefore quoted takes away from the person indicted for a crime by virtue of the institution of removal proceedings against him, the rights guaranteed to him under Article V of the Amendments to the Constitution of the United States in that he is placed in jeopardy of life and limb, is compelled to testify in a case against himself prior to the time that he may go to trial on the criminal indictment.

21. That in the particular proceeding before this court, Article VI of the Amendments to the Constitution of the United States, as is more hereinafter set forth, has been grossly violated because the complainants herein have been denied the right of a speedy and public trial by an impartial jury, and that the record of the proceedings and exhibits which will be brought into this action involved before the defendant Theodore R. Bohn, the unique One-Man

Grand Juror, the Honorable John W. Conlin, Probate Judge, the Honorable Thomas M. Kavanagh, Attorney General, and the Honorable G. Mennen Williams, Governor, indicate that the greatest amount of pressure has been exerted by all of the defendants, except the Honorable John W. Conlin, to force said complainants to a hearing on the removal proceeding before they have any opportunity whatsoever to have a trial under the criminal indictment hereinafter more particularly referred to, which rights are guaranteed to them by Article VI of the Amendments to the Constitution of the United States.

22. That complainants, as citizens of the United States and public officers of the City of Ecorse, are entitled to the privileges and immunities guaranteed to them by Article XIV of the Amendments to the Constitution of the United States hereinbefore quoted in Paragraph 8 above, all of which each and all of the defendants herein seek to deny that they are entitled to.

23. That subsequent to October 17, 1956, the complainants herein attended a preliminary examination in accordance with the laws of the State of Michigan before the Honorable Douglas Leo Paterson, Justice of the Peace in and for the City of Grosse Pointe, which examination was concluded on or about November 26, 1956, at which time said Justice of the Peace bound over and determined that there was probable cause to hold said complainants for trial on the warrant and indictment attached hereto, made a part hereof and designated as Appendix "A".

24. That on or about the 1st or 2nd day of November A.D. 1956, while complainants herein were involved in a preliminary examination, that the three complainants, William W. Voisine, Francis Labadie and Albert Buday were served with an alleged removal proceeding executed

by the defendant G. Mennen Williams, set for hearing before the Honorable John W. Conlin on November 13, 1956, which removal documents in respect to the three complainants herein named are substantially the same, except that a notice was issued to each of the complainants individually.

25. The three complainants charge that said removal charges and executive order of the Governor are one and the same document and that for all practical purposes the constitutional rights of three of the particular complainants pertaining to this action are one and the same.

26. Complainants charge in reference to Elmer Korn that he was indicted by the Grand Jury upon a different charge, and that his removal proceeding is upon a different ground, but that in respect to his constitutional rights they parallel and are substantially the same as they are for the other three complainants herein.

27. Complainants further show that on November 13, 1956, upon request of defense counsel, who appear as attorneys for the complainants herein, that the Honorable John W. Conlin adjourned the removal proceeding so-called on November 21, 1956, in order to give the various defendants in the removal proceeding and the complainants herein an opportunity to complete their preliminary examinations before the Honorable Douglas Leo Paterson, Justice of the Peace.

28. Complainants further show that on the 21st day of November, 1956, that each and all of the complainants herein, who are named as defendants in the various Grand Jury indictments and who are sought to be removed from office, appeared before the Honorable John W. Conlin in the City-County Building of the City of Detroit, at which time cer-

tain motions to dismiss, objections and legal arguments were made, all of which will appear in the removal proceedings pertaining to the four complainants herein.

29. Complainants further charge that they made strenuous objection to proceeding to a hearing on the removal charges prior to being heard upon the criminal case, because of the fact that the removal statute of the State of Michigan, which is Michigan Statutes Annotated 6.1327, Compiled Laws of 1948, 168.327, amounts to a bill of attainder in that it provides a full and complete penalty for the acts complained of in the removal proceedings, and likewise violates Article V of the Amendments to the Constitution of the United States in that it puts said complainants twice in jeopardy, said statute being as follows:

"The governor shall remove all city officers chosen by the electors of any city or any ward or voting district thereof, when he shall be satisfied from sufficient evidence submitted to him, as hereinafter provided, that such officer has been guilty of official misconduct, or wilful neglect of duty, or of extortion, or habitual drunkenness, or has been convicted of being drunk, or whenever it shall appear by a certified copy of the judgment of a court of record of this state that such officer, after his election or appointment, shall have been convicted of a felony; but the governor shall take no action upon any such charges made to him against any such officer until the same shall have been exhibited to him in writing, verified by the affidavit of the party making them, that he believes the charges to be true. But no such officer shall be removed for such misconduct or neglect until charges thereof shall have been exhibited to the governor as above provided and a copy of the same served on such officer, and an opportunity given him of being heard in his defense; Provided, That the

service of such charges upon the person or persons complained against shall be made by handing to such person or persons a copy of such charges, together with all affidavits or exhibits which may be attached to the original petition if such person or persons can be found; and if not, by leaving a copy at the last place of residence of such person or persons with some person of suitable age, if such person can be found; and if not, by posting it in some conspicuous place upon his last known place of residence. No officer who has been removed in accordance with the provisions of this section shall be eligible to election or appointment to any office for a period of 3 years from the date of such removal."

30. That the aforesaid power of the Governor is quasi judicial and does not provide for any remedy in any manner whatsoever in the event said officer is wrongfully removed, because said Act provides that the person removed from office shall be prohibited for a period of three years from rerunning for office; and likewise, the Supreme Court of the State of Michigan has held that there is no discretion to review the Act by the Governor in said connection.

31. That there was filed in said removal proceedings in behalf of the complainant William W. Voisine a reply and motion which raised almost each and all constitutional objections to the removal proceedings, and more particularly the situation that the statute provides that the Attorney General of the State of Michigan shall furnish to the complainant subpoenas, and said complainants charge that to this date the defendant Thomas M. Kavanagh has ignored and neglected any and all requests in behalf of your complainants for subpoena forms.

32. Your complainants further charge that lengthy affidavits and motions were filed in behalf of all complainants indicating and setting forth that they would not be able to obtain witnesses in their own behalf and defense while said Grand Jury was in session, and while certain other defendants who might be necessary witnesses for the complainants in the defense of the removal proceeding were under indictment.

33. Your complainants further charge that the matters set forth in the removal proceeding arise out of an unconstitutional statute, that they are vague, general and indefinite and do not apprise the complainants of the specific nature of the charges to be presented against them and that in this connection all complainants made motions for a more specific bill of particulars which was denied by the defendant, the Honorable John W. Conlin, on January 9, 1957.

34. Complainants charge that they filed with the Honorable John W. Conlin in the removal proceeding verified documents to the effect that at the removal proceeding they would not be able to obtain witnesses to testify for and in their behalf because of the fact that said witnesses were under indictment in other proceedings and, therefore, could not be compelled to take the witness stand or subject themselves to cross-examination, as a result of which due process of law would not be complied with, but that the Honorable John W. Conlin ruled that he had no authority except to continue the hearing unless the proceeding were stopped by a court other than his own.

35. Complainants charge that the decision of the Honorable John W. Conlin made on January 9, 1957, ruled that the proceedings before the Governor are quasi-judicial and not ministerial, as a result of which the complainants herein

are not seeking to restrain the executive acts or ministerial acts of the administrative officer of the State of Michigan.

36. That the Grand Jury Act hereinbefore referred to actually confers upon the Governor of the State of Michigan, namely, the defendant herein, G. Mennen Williams and his representatives, John W. Conlin and Thomas M. Kavanagh, and the One-Man Grand Juror, judicial powers to deny a person charged with crime a trial by jury in violation of Article VI of the United States Constitution hereinbefore quoted.

37. That the removal proceeding hereinbefore referred to against each and all of these complainants denies to each and all of the complainants those rights which the Supreme Court of the United States has determined, that a citizen of the United States is entitled to, by virtue of its decision in the matter of *Slochower vs. Board of Education of New York, 350 US 551 100 Law Ed. 449, decided April 9, 1956,* in that it would compel each and all of these complainants and each and all of the witnesses in their behalf to take the witness stand and be subjected to cross-examination and possible self-incrimination prior to the time that they proceed to a trial on the indictment issued against them, which indictment is attached hereto, made a part hereof and designated as Appendix "B".

38. That the defendants herein, each and all of them, have sought to proceed with the greatest amount of haste in the removal proceeding while delaying the criminal proceeding, because of the fact that records of the Circuit Court for the County of Wayne will indicate that they did not file the information in the criminal proceeding until December 21, 1956, and that the same is not noticed for hearing until January 15, 1957, on an arraignment on the information on which day the defendants therein and the

complainants herein will have the right to stand mute while motions to quash are taken with appropriate action under the criminal laws of the State of Michigan.

39. Complainants charge that William W. Voisine has filed and noticed for hearing on January 15, 1957, a motion to quash said criminal proceeding; that the complainant, Francis Labadie, has filed and noticed for hearing a motion to quash said information on January 11, 1957; and that complainant, Elmer Korn, has demanded that an information against him be filed but that to the date of the execution of this bill of complaint none has so been filed.

40. Your complainants further charge that at the hearing before the Honorable John W. Conlin, Washtenaw County Probate Judge, on Wednesday, January 7, 1957, that they exhausted all legal remedies available to them and that they have not sought or taken advantage of any dilatory tactics in the removal proceeding herein sought to be restrained or in the criminal proceeding on file in the Circuit Court for the County of Wayne.

41. Complainants further charge that each and all of the defendants herein are guilty of attempting to deny to your complainants their constitutional rights as set forth in the sections of the Constitution hereinbefore quoted and which are asserted clearly in the decisions of the Supreme Court of the United States in the case of *Powell vs. Alabama, 287 U. S. 45-77, 77 Law Ed. 158,* and which are in part defined in the case of *In Re Oliver,* in the words of Mr. Justice Black, *333 U. S. 257-286, 99 Law Ed. 682,* pertaining to the Michigan unique One-Man Grand Jury Law, and the case of *In Re Murchison and White, 349 U. S. 133, 99 Law Ed. 942-75 Supreme Court 623,* in the words of Mr. Justice Black, in that said defendants have attempted and are at-

tempting with the greatest zeal and ardor to remove the four complainants herein from their public offices under the statute hereinbefore set out before they have had any opportunity whatsoever to proceed with or meet the trial of the criminal charges against them.

42. Complainants further charge that there was a motion made to quash certain subpoenas before the defendant Theodore R. Bohn, the unique One-Man Grand Juror, which came on to be heard on November 8, 1956, at which time a transcript of testimony and argument was made which motions are on file and on record and which to this date have not been decided.

43. Each and all of the complainan's allege and charge that in the event they are compelled to proceed to a hearing per the announced decision of the Honorable John W. Conlin on January 9, 1957, pertaining to the removal and/or ouster proceedings under the statute hereinbefore quoted, that their constitutional rights hereinbefore alleged will be violated and that in effect such great irreparable damage and injury can be done to them that it would not be possible for them to repair the same within the period of a lifetime.

44. Your complainants further charge that their reputations as were built up throughout an entire period of life are in jeopardy, and that the defendants herein seek to, by removal proceedings, take away from said complainants their political, private and property rights in the form of their reputations prior to the time that they are able to proceed to a trial in the criminal proceeding, and that unless this court takes jurisdiction of this case under the statutes hereinbefore cited and prevents the defendants herein from further invading the constitutional rights of your complainants, that they can be as completely ruined and destroyed as it is possible for a person to be without hav-

ing had the benefit of due process of law, and the protection of other constitutional rights guaranteed to them by the Constitution of the United States, as set forth in the constitutional provisions hereinbefore cited.

45. Your complainants further charge that they are without remedy whatsoever except in a Federal court of equity, and that each and all of the claims made herein involve, in addition to their constitutional rights, a large sum of money.

46. Complainants further show that on January 9, 1957, they were allowed and permitted only until January 14, 1957, the right to present to a Federal Court their petition for a stay of the removal proceedings and that as a result thereof they have not been able to formulate and present to this court in the best form they would desire a complaint which would chronologically and fairly put their story and the issue to this court.

47. That an examination of Appendices "A", "B" and "C" attached hereto and made a part hereof, together with the transcript of the proceedings taken before the defendant, the Honorable John W. Conlin, together with the statement by the representative of the defendant, Thomas M. Kavanagh, will indicate that the criminal case and the removal proceeding are based upon one and the same set and issue of facts, all in violation of the constitutional rights of each and all of the complainants herein.

48. Complainants further show that while they joined as complainants that their cases are substantially one and the same, and that there exists in reference to any individual among them only certain differences in the facts which may be developed before the trial court, and that they will not affect the main issue involved herein.

49. Complainants further charge that because of the time limitation allowed to them in the order of the defendant, John W. Conlin, as announced on January 9, 1957, that they have not had an opportunity to assemble and bring together as exhibits in this bill of complaint all of the documents and instruments necessary for a full understanding by this court of the issues and problems involved, and said complainants allege that the Federal Rules of Practice and Procedure will enable them in due course to bring all of the documents, proceedings and transcript now in existence before the various defendants into evidence in this cause.

WHEREFORE YOUR COMPLAINANTS PRAY:

(1) That the complainants herein be granted all process provided by the Constitution and Statutes of the United States and the Federal Rules of Civil Procedure.

(2) That the defendants herein make full and complete answer to each and all of the allegations herein set forth paragraph by paragraph.

(3) That the complainants be granted the full and complete use of all remedies provided for in the Federal Rules of Civil Procedure pertaining to interrogatories, depositions and records of admission.

(4) That by virtue of the Federal Rules of Civil Procedure, to-wit: Rule 65, that the complainants herein be granted upon the filing of this bill of complaint an order restraining the four defendants named herein from proceeding further with the removal proceeding before the Honorable John W. Conlin, Probate Judge for the County of Washtenaw, until the other matters of relief herein prayed for may be determined by this court, because of the great irreparable injury, loss and damage that will result to the

complainants between the date of the filing of this verified bill of complaint and of the return date of the order to show cause, for a temporary injunction and the motion for the appointment of a three-judge court.

(5) That said temporary restraining order herewith issued is merely for the purpose of preserving the status quo of the subject matter until and when the normal judicial processes of this court can be properly invoked to determine whether or not said complainants have material rights to protect.

(6) That because of the allegations contained in the foregoing bill of complaint, that a three-judge court be organized in accordance with Rule 65 of the Federal Rules of Civil Procedure, 28 U. S. Code Annotated 2284, for the purpose of determining that said complainants are entitled to an interlocutory injunction, as aforesaid, by a temporary restraining order to prevent immediate, great and irreparable injury, loss and damage to the complainants which will result by virtue of the violation of their constitutional rights for which they have no statutory remedies.

(7) That upon the final hearing of this cause a permanent injunction be granted to said complainants and against said defendants determining the following:

a. That the entire removal proceeding instituted by the findings of the unique One-Man Grand Juror arises out of an unconstitutional proceeding and amounts to a bill of attainder, and is therefore void and of no force and effect.

b. That Sections 767.3 and 767.4 of the Compiled Laws of 1948 of the State of Michigan, being Michigan Statutes Annotated 28.943 and 28.944, are unconstitutional and void

by reasons of matters hereinbefore set forth in this bill of complaint, in that they violate many of the aforesaid Federal constitutional provisions.

c. That Section 168.327 of the Compiled Laws of 1948, being Michigan Statutes Annotated 6.1327, as the same combines in operation with the unique One-Man Grand Jury Act, hereinbefore set out, amounts to a bill of attainder, banned and prohibited by virtue of the Federal constitutional provisions and is therefore unconstitutional and void.

d. That the removal proceedings referred to in this bill of complaint, and attached hereto as Appendix "B", be held to be unconstitutional and void and be permanently restrained and suppressed by the equity jurisdiction of this court, in that the same has arisen out of a totally void and unconstitutional proceeding.

e. That the Warrant attached hereto as Appendix "A" and the Information attached hereto as Appendix "C" be determined to have arisen out of a completely void and unconstitutional proceeding by virtue of matters set forth herein in direct violation of the Federal constitutional provisions cited herein, and the decisions of the United States Supreme Court herein referred to.

f. That your complainants have such other and further relief in the premises as shall be available under the pertinent provisions of the Constitution of the United States, the United States Code and the Federal Rules of Civil Procedure.

And your complainants will ever pray.

January 11, 1957

FRANCIS K. YOUNG,
Attorney for
William W. Voisine,
Mayor of Ecorse
1657 Penobscot Building
Detroit 26, Michigan

JEROME P. CAVANAGH,
Attorney for
Francis Labadie
600 Griswold Street
Detroit 26, Michigan

MICHAEL GUEST,
Attorney for
Albert Buday
1832 Buhl Building
Detroit 26, Michigan

[Duly verified]

JOSEPH FREED,
Attorney for
Elmer Korn
2933 Cadillac Tower
Detroit 26, Michigan

WILLIAM W. VOISINE,
Mayor of Ecorse

FRANCIS LABADIE,
Councilman for
the City of Ecorse

ALBERT BUDAY,
Councilman for
the City of Ecorse

ELMER KORN,
Councilman for
the City of Ecorse

Appendix "A," attached to Complaint filed in United States District Court in Cause of William W. Voisine et al., v. John W. Conlin, G. Mennen Williams, Governor, et al.:

Being copy of Warrant for arrest of William W. Voisine, et al., issued by Theodore R. Bohn, Judge of Circuit Court for the county of Wayne, Michigan.

(Dated, Oct. 17, 1956)

WARRANT

STATE OF MICHIGAN

IN THE CIRCUIT COURT
FOR THE COUNTY OF WAYNE

STATE OF MICHIGAN)
COUNTY OF WAYNE) ss. Misc. No. 83258.

TO: Commissioner of the Michigan State Police, the Sheriff of Wayne County, any Captain, Lieutenant, Sergeant, Detective or Trooper of the Michigan State Police, any Deputy Sheriff of Wayne County, the Commissioner of the Detroit Police Department, any Inspector, Lieutenant, Sergeant, Detective, or Patrolman of the Detroit Police Department, and to all Police officers in the State of Michigan. GREETINGS:

WHEREAS, upon an inquiry conducted under and in pursuance of Sections 767.3 and 767.4, and all sections of the Compiled Laws of Michigan for the year 1948, as amended, relative to the inquiries provided for under said sections of the Compiled Laws of 1948, before me, THEODORE R. BOHN, one of the Judges of the Circuit Court for the County of Wayne, in the matter entitled:

In the matter of the application of Thomas M. Kavanagh, Attorney General of the State of Michigan, and Gerald K. O'Brien, Prosecuting Attorney for the County of Wayne, for a judicial investigation concerning criminal offenses and unlawful practices in the Township of Taylor, the City of Ecorse, and other governmental units in the County of Wayne

there appears to me to be probable cause to believe that heretofore, to-wit: Between the 10th day of November, A.D. 1953, and on divers other days between that time and the 28th day of September, A.D. 1956, in the city of Ecorse, County of Wayne, and State of Michigan, WILLIAM W. VOISINE, ALBERT BUDAY, FRANCIS LABADIE, WILLIAM JONES, WALTER CHASE, JOHN BADER, PATRICK SLITTI, N[redacted]STROIA, GREELIE DUKES, HARRY MONKS, IRVIN STEFFES, ALVIN GILLMAN, ROSCOE BOBO, ROOSEVELT LACKEY, JOSEPH KOVALCHIK; PAUL SACKENHEIM, WESLEY CHILDRESS, ANDREW COOK, and J. C. WALLS, and ROBERT NEAL, AMOS BOTT and JOHN DOE No. 3, JOHN DOE No. 4, JOHN DOE No. 5, JOHN DOE No. 6, and JOHN DOE No. 7, and MARY ROE No. 1, MARY ROE No. 2, MARY ROE No. 3, MARY ROE No. 4 and MARY ROE No. 5, and divers other persons to the Grand Jury unknown, late of the city of Ecorse, County and State aforesaid, did wickedly, maliciously and feloniously conspire, combine, confederate and agree together with William Montry and Russell T. Trilck, and with each other, and with divers other persons, to obstruct justice in that he, the said WILLIAM VOISINE, being then and there a public and executive officer of the said city of Ecorse, county and state aforesaid, to-wit: the Mayor of said city of Ecorse, county and state aforesaid, having theretofore been duly elected to the said office of Mayor, and having qualified therein and acted in his capacity as may[illegible] of said city during the period of time from November 10, 1953 until September 28, 1956; and he, the said ALBERT BUDAY, being then and there a public and legislative officer of the city of Ecorse, county and state aforesaid, to-wit: a member of the City Council for all or a portion of the time set out in the dates aforesaid; and he, the said FRANCIS LABADIE, being then and there a public and

legislative officer of the city of Ecorse, county and state aforesaid, to-wit; a member of the City Council for all or a portion of the time set out in the dates aforesaid; and he, the said WILLIAM JONES, being then and there a public and executive officer of the city of Ecorse, county and state aforesaid, to-wit: the City Controller, for all or a portion of the time set out in the dates aforesaid; and he, the said WALTER CHASE, being then and there a public and executive officer of the city of Ecorse, county and state aforesaid, to-wit: the city Purchasing Agent, for all or a portion of the time set out in the dates aforesaid; and he, the said JOHN BADER, being then and there a public and executive officer of the city of Ecorse, county and state aforesaid, to-wit: Personnel Director, for all or a portion of the time set out in the dates aforesaid; and he, the said PATRICK SLITTI, being then and there a public and executive officer of the city of Ecorse, county and state aforesaid, to-wit: a member of the Police and Fire Commission during all or a portion of the time set out in the dates aforesaid; and he, the said NICK STROIA, being then and there a public and executive officer of the city of Ecorse, county and state aforesaid, to-wit: a member of the Police and Fire Commission during all or a portion of the time set out in the dates aforesaid; and he, the said GREELIE DUKES, being then and there a public and executive officer of the city of Ecorse, county and state aforesaid, to-wit: a member of the Police and Fire Commission during all or a portion of the time set out in the dates aforesaid; and he, the said HARRY MONKS, being then and there a public and executive officer of the city of Ecorse, county and state aforesaid, to-wit: a member of the Police and Fire Commission during all or a portion of the time set out in the dates aforesaid; and he, the said IRVIN STEFFES, being then and there a public and executive officer of the city of Ecorse, county and state

aforesaid, to-wit: a member of the Police and Fire Commission during all or a portion of the time set out in the dates aforesaid; and he, the said ALVIN GILLMAN, being then and there a public and executive officer of the city of Ecorse, county and state aforesaid, to-wit: Chief of Police of the Ecorse Police Department, for all or a portion of the time set out in the dates aforesaid; and he, the said ROSCOE BOBO, being then and there a public and executive officer of the city of Ecorse, county and state aforesaid, to-wit: Inspector of the city of Ecorse police department for all or a portion of the time set out in the dates aforesaid; and he, the said ROOSEVELT LACKEY, being then and there a public and executive officer of the city of Ecorse, county and state aforesaid, to-wit: Deputy Chief of Detectives of the city of Ecorse police department for all or a portion of the time set out in the dates aforesaid; all of whom were then duly elected, appointed and qualified, and acting in their respective official capacities during such period or part of such period of time; and they, the SAID JOSEPH KOVALCHIK and PAUL SACKENHEIM, and divers other persons, being then and there in said city of Ecorse, county and state aforesaid, were engaged in keeping or maintaining a gaming room or gaming table or a game of skill or chance, or partly of skill and partly of chance, used for gaming, for hire, gain or reward, to-wit: Handbooks wherein bets could be made upon horse races, during all or a portion of the time set out in the dates aforesaid, in violation of the laws of the State of Michigan, to-wit: Section 750.303, Compiled Laws 1948; and who were keeping, maintaining, operating or occupying a building or room or part thereof, or place, with apparatus, books or devices for registering bets, or buying or selling pools upon the result of a trial or contest of skill, speed or endurance, or upon the result of a game, or contest, to-wit: horse races, in violation of the laws of the State of Michi-

gan, to-wit: Section 750.304, Compiled Laws 1948; and they, the said WESLEY CHILDRESS, ANDREW COOK and J. C. WALLS, and divers other persons to the grand jury unknown, being then and there in the city of Ecorse, county and state aforesaid, engaged in or assisted and enabled the setting up or promotion or management, within the State of Michigan and the said county and city, of a certain lottery or gift enterprise for money, to-wit: the mutuel numbers business, during all or a portion of the time set out in the dates aforesaid, in violation of the laws of the State of Michigan, to-wit: Section 750.301, Section 750.302, Section 750.303, Section 750.304, Section 750.305 and Section 750.306, Compiled Laws of 1948; and divers other persons, to the grand jury unknown, who engaged in or assisted and enabled in the setting up or promotion or management, in the city of Ecorse, county and state aforesaid, of a gaming room or gaming table, or a game of skill or chance, or partly of skill and partly of chance, used for gaming for hire, gain or reward, to-wit: barbut and other dice games, and poker, and other card games, in violation of the laws of the State of Michigan, to-wit: Section 750.303, Compiled Laws of 1948; and they, the said WILLIAM VOISINE, ALBERT BUDAY, FRANCIS LABADIE, WILLIAM JONES, WALTER CHASE, JOHN BADER, PATRICK SLITTI, NICK STROIA, GREELIE DUKES, HARRY MONKS, IRVIN STEFFES, ALVIN GILLMAN, ROSCOE BOBO and BOOSEVELT LACKEY, public officials of the said city of Ecorse, county and state aforesaid, then and there well knowing that said keeping, maintaining, operating, or assisting in keeping, maintaining, and operating handbooks, mutuel numbers, barbut and other dice games, poker and other card games, and other gambling games, was a violation of the laws of the State of Michigan and the ordinances of the said city of Ecorse; and they, the said public officials and policemen, well

knowing that it was their respective duty to use all lawful means within their respective power to stop and prevent the operation of such keeping or maintaining of a gaming room, gaming table, games of skill or chance, or partly of skill and partly of chance, used for gaming, and to prevent the operation or the keeping of gambling devices for hire, gain or reward, and the promotion, maintaining, management or operation of a lottery or gift enterprise for money in said city of Ecorse, in said County of Wayne, which are contrary to the laws of the State of Michigan, and the ordinances of the city of Ecorse; and also knowing that it was the official duty of the various public officials and policemen herein named, to prevent the operation and maintenance of said unlawful and illegal enterprises in said city of Ecorse, Wayne County, Michigan, they, the said public officials and police officers, knowingly permitted, suffered, assisted, enabled, or allowed said gambling games, devices, lotteries as aforesaid to flourish, operate, and be maintained by the aforesaid individuals and divers other persons to the Grand Juror unknown in return for bribes, gifts and gratuities and payments of money and did conspire to do other acts generally calculated to interfere with the orderly process of the administration of law in the said city of Ecorse, county and state aforesaid, contrary to the laws of the State of Michigan and against the peace and dignity of the people of the State of Michigan (750.505, C.L. 1948).

NOW, THEREFORE, in the name of the People of the State of Michigan, you and each of you are commanded to forthwith arrest the said WILLIAM W. VOISINE ALBERT BUDAY, FRANCIS LABADIE, WILLIAM JONES, WALTER CHASE, JOHN BADER, PATRICK SLITTI, NICK STROIA, GREELIE DUKES, HARRY

MONKS, IRVIN STEFFES, ALVIN GILLMAN, ROSCOE BOBO, ROOSEVELT LACKEY, JOSEPH KOVALCHIK, PAUL SACKENHEIM, WESLEY CHILDRESS, ANDREW COOK and J. C. WALLS, and ROBERT NEAL, AMOS BOTT and JOHN DOE No. 3, JOHN DOE No. 4, JOHN DOE No. 5, JOHN DOE No. 6 and JOHN DOE No. 7 and MARY ROE No. 1, MARY ROE No. 2, MARY ROE No. 3, MARY ROE No. 4, and MARY ROE No. 5, and bring them before me, to be dealt with according to law.

Given under my hand and seal of said court, in the city of Detroit, County of Wayne, State of Michigan, on the 17th day of October, A. D. 1956.

(Sgd) Theodore R. Bohn

Judge, Circuit Court for the County of Wayne

(SEAL)

A TRUE COPY

EDGAR M. BRANIGIN, Clerk
DAN DeVOGLAW, Deputy Clerk

STATE OF MICHIGAN }
COUNTY OF WAYNE } ss.

BY VIRTUE OF THE WITHIN WARRANT to me directed, I hereby certify and return that I have taken the within named WILLIAM W. VOISINE, ALBERT BUDAY, FRANCIS LABADIE, WILLIAM JONES, WAL-

TER CHASE, JOHN BADER, PATRICK SLITTI, NICK STBOLA, GREELIE DUKES, HARRY MONKS, IRVIN STEFFES, ALVIN GILLMAN, BOSCOE BOBO, BOOSEVELT LACKEY, JOSEPH KOVALCHIK, PAUL SACKENHEIM, WESLEY CHILDRESS, ANDREW COOK, J. C. WALLS, ROBERT NEAL and AMOS BOTT whom I have, before the Honorable Theodore R. Behn, Judge of the Circuit Court for the County of Wayne, as I am within commanded

Appendix "B," attached to Complaint filed in United States District Court in Cause of William W. Voisine et al., v. John W. Conlin, G. Mennen Williams, Governor, et al.:

a. Notice of Hearing on charges of malfeasance in office against William W. Voisine, Mayor of the City of Ecorse, Wayne county, Michigan.

b. Copy of such charges of malfeasance, attached thereto.

c. Copy of Order of Governor of the State of Michigan, appointing Judge of Probate to hear such charges [attached to Notice of Hearing].

NOTICE

To William W. Voisine

WHEREAS there has been presented to the Honorable G. Mennen Williams, Governor of the State of Michigan, written findings by the Honorable Theodore R. Bohn, one of the Circuit Judges of the Third Judicial Circuit, acting as a One Man Grand Juror as by law provided, charging William W. Voisine, Mayor of the City of Ecorse, County of Wayne, State of Michigan, a city officer, with official misconduct in office consisting of certain acts of misfeasance, malfeasance and non-feasance constituting grounds for removal from office, all as set forth in a true copy of such written findings attached hereto; and, whereas, the Governor of the State of Michigan has by Executive Order, copy of which is attached, directed Thomas M. Kavanagh, Attorney General of the State of Michigan, to conduct and inquire into the charges made; and, whereas, the Governor of the State of Michigan has heretofore appointed the Honorable John W. Conlin, Judge of Probate of Washtenaw County, as the judge for such purpose and to hear said charges, to conduct hearings and to certify a correct transcript of all testimony taken before him at said hearings for transmittal by the Attorney General to the Governor;

NOW THEREFORE you the said William W. Voisine are hereby notified that in accordance with Section 201.7 Compiled Laws of 1948 said hearing and inquiry into the charges aforesaid will be held and commenced before the Honorable John W. Conlin in Room 1807 at the City-County Building in the City of Detroit, Michigan on the

13th day of November, A.D. 1956 at 10:00 a.m. at which time and place the Attorney General or his duly designated representative will present evidence and will examine witnesses in relation to such charges. You are further notified that at said time and place you may be present in person and by counsel for the purpose of cross-examining witnesses, presenting evidence and such defenses as you may have to the charges.

THOMAS M. KAVANAGH
Attorney General

By Horace W. Gilmore
Deputy Attorney General

FINDINGS OF ONE MAN GRAND JURY RE: WILLIAM W. VOISINE, MAYOR OF ECORSE, WAYNE COUNTY, MICHIGAN, and FRANCIS LABADIE and ALBERT BUDAY, COUNCILMEN, CITY OF ECORSE, WAYNE COUNTY, MICHIGAN.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

STATE OF MICHIGAN }
COUNTY OF WAYNE } ss. Misc. No. 83258

TO: The Honorable G. Mennen Williams, Governor of the State of Michigan:

Honorable Sir:

WHEREAS, upon an inquiry conducted under and in pursuance of Sections 767.3 and 767.4, and all sections of

the Compiled Laws of Michigan for the year 1948, as amended, relative to the inquiries provided for under said sections of the Compiled Laws of 1948, before me, THEODORE R. BOHN, one of the Judges of the Circuit Court for the County of Wayne, in the matter entitled:

In the Matter of the application of Thomas M. Kavanagh, Attorney General of the State of Michigan, and Gerald K. O'Brien, Prosecuting Attorney for the County of Wayne, for a judicial investigation concerning criminal offenses and unlawful practices in the Township of Taylor, the City of Ecorse, and other governmental units in the County of Wayne

I find from the sworn testimony given before me that there appears to be probable cause to believe that heretofore, to-wit: Between the 10th day of November, A.D. 1953 and on divers other days between that time and the 28th day of September, A.D. 1956, in the city of Ecorse, County of Wayne, State of Michigan, one WILLIAM W. VOISINE, who at the present time is, and during the events hereinafter related was at all times the duly elected and qualified mayor of the city of Ecorse, County of Wayne, State of Michigan; and FRANCIS LABADIE, and ALBERT BUDAY, who at the present time are, and during the events hereinafter related, were at all times duly elected and qualified members of the city council of the city of Ecorse, County of Wayne, State of Michigan, have been guilty of misfeasance, malfeasance and non-feasance in office; and probable cause to believe that the aforesaid WILLIAM W. VOISINE, FRANCIS LABADIE and ALBERT BUDAY have been guilty of several offenses constituting grounds for their removal from their respective offices of mayor and members of the city council of the city of Ecorse, County of Wayne, State of Michigan,

in the manner and form hereinafter set forth; and these findings of fact, based upon the sworn testimony presented, are contained within the following charges:

1. I find from the sworn testimony given before me in said inquiry that WILLIAM W. VOISINE acted as mayor of the city of Ecorse, County of Wayne, State of Michigan, from November 10, 1953 and continues to so act at the present time.

2. I further find that FRANCIS LABADIE and ALBERT BUDAY were duly elected legislative officers, to-wit: councilmen for the city of Ecorse, County of Wayne, State of Michigan, having qualified therefor as city councilmen by virtue of said election to said office on November 10, 1953, and that they continue to hold said office at the present time.

3. I further find from the sworn testimony given before me upon said inquiry, that upon assuming said office, the said WILLIAM VOISINE appointed one WILLIAM MONTRY as a member of the Police and Fire Commission for the city of Ecorse, County of Wayne, State of Michigan, in November of 1953, and that said WILLIAM MONTRY was approved by the Common Council for this office, and that the said WILLIAM MONTRY served in that capacity at the pleasure of the mayor and the common council from November of 1953 until he resigned on July 26, 1956, and, as such member of the Commission, was a public officer and an employee of the city of Ecorse, Wayne County, State of Michigan.

4. That the duties of WILLIAM W. VOISINE, as mayor, are set forth in the laws and statutes of the State of Michigan, and in the city of Ecorse charter, as conferred

by the Compiled Laws of Michigan, 1948, Section 87.1, and in the laws and statutes of the State of Michigan, and that, among such duties, it was incumbent upon him, and upon his duly appointed agents and employees, to faithfully use all the lawful means within their respective powers, to prevent the operation of games of skill or chance, handbooks, mutuel numbers, barbut and other dice games, poker and other card games, and other gambling games, and to see that all laws of the State of Michigan and the city government, including the state statutes and ordinances of the city of Ecorse, were enforced. Further, it was incumbent upon him, as mayor, and upon his assistants, employees and agents, to use diligent efforts to prevent violation of the criminal laws of the State of Michigan and the ordinances of the city of Ecorse, County of Wayne, State of Michigan.

5. That the duties of FRANCIS LABADIE and ALBERT BUDAY are set forth in the laws and statutes of the State of Michigan and the city of Ecorse charter, as conferred by Act 279, P.A. 1909, and the Compiled Laws of 1948, Section 117.2, which were adopted by the city of Ecorse on January 27, 1942, with amendments up to and including April 6, 1953, giving the said FRANCIS LABADIE and ALBERT BUDAY full power and authority to exercise powers to protect and advance the interests of the city of Ecorse, the safety, order, good government and general welfare of its inhabitants, together with such implied and incidental powers to prevent the operation of games of skill or chance, handbooks, mutuel numbers, barbut and other dice games, poker and other card games, and other gambling games, and to see that the laws of the State of Michigan and ordinances of the city of Ecorse were enforced.

6. I further find from the sworn testimony and evidence given before me that between the aforementioned dates, certain games of skill or chance, or games partly of skill and partly of chance, to-wit: handbook operations where bets were accepted on horse races, were operated at the following locations by the following named persons:

Name	Address
1. Joe Kovalchik (alias Bookie Joe)	4075 W. Jefferson, Ecorse, Michigan
2. Paul Seckenheim	280 W. Woodward, Ecorse, Michigan

7. I further find from the sworn testimony and evidence given before me that between the aforementioned dates certain lotteries, games of skill or chance, and partly of skill and partly of chance, to-wit: mutuel numbers operations, were carried on by the following named persons at the following addresses:

1. Russell Trilck	553 Visger Road, Ecorse, Michigan, and numerous other addresses in Ecorse.
2. Wesley Childress	242 Visger Road, Ecorse, Michigan, and numerous other persons at various addresses in the city of Ecorse.

8. I further find from the sworn testimony and evidence given before me that between the aforementioned dates certain games of skill or chance, or games partly of skill and partly of chance, gaming tables, gaming rooms, to-wit: barbut games, were operated by the following persons at the following addresses:

1. Russell Trilck — 3708 W. Jefferson Avenue, Ecorse, Michigan

2. Operator unknown — 4480 W. Jefferson Avenue, Ecorse, Michigan,

and numerous other persons at various addresses in the city of Ecorse.

9. I further find from the sworn testimony and evidence given before me that between the aforementioned dates certain games of skill or chance, or games partly of skill and partly of chance, to-wit; poker games and other card games, were operated by numerous persons at numerous addresses unknown to the grand jury.

10. I further find from the sworn testimony given before me in said inquiry that, with utter disregard of and in violation of their aforesaid respective duties, the mayor and councilmen, the said WILLIAM W. VOISINE, FRANCIS LABADIE and ALBERT BUDAY, did conspire, confederate and agree with said RUSSELL TRILCK, his servants, agents and employees, Joe Kovalchik, (alias Bookie Joe), Paul Sackenheim and Wesley Childress, and with law enforcement officers and agents of the said city of Ecorse, county and state aforesaid, to-wit: ROOSEVELT LACKEY, ROSCOE BOBO and ALVIN GILLMAN, and other law enforcement officers, to wilfully neglect to enforce the aforementioned criminal laws of the State of Michigan and ordinances of the city of Ecorse, and permit the aforementioned criminal laws to be openly violated, and did aid and abet certain law violators in said city and county in the State of Michigan, and did assist and enable those engaged in violation of such laws to accomplish their criminal purpose or purposes, by refraining from apprehending or trying to apprehend said violators, and by wilfully and intentionally permitting the above mentioned illegal enterprises and criminal acts to continue and flour-

ish, with full knowledge of the facts that such violations of criminal laws were existing in said city and country.

11. I further find from the sworn testimony and evidence given before me on said inquiry that there is probable cause to believe that the said WILLIAM W. VOISINE, as mayor, during the aforesaid time, received money, gifts and gratuities, paid by the owners, operators, agents or employees of the said unlawful and illegal enterprises, amounting to thirty thousand dollars ($30,000.00) and upwards, paid to him by the aforesaid RUSSELL TRILCK, his servants, agents and employees, in furtherance of an understanding and agreement between the said WILLIAM W. VOISINE, as mayor, and RUSSELL TRILCK, his servants and employees, and other individuals who were engaged in violating the criminal laws of the State of Michigan, and ordinances of the city of Ecorse, whereby the said mayor, WILLIAM W. VOISINE, did knowingly permit the commission of the aforesaid illegal, unlawful and criminal acts, in the city, county and state aforesaid, which were of a very flagrant nature.

12. I further find from the sworn testimony and the evidence given before me on said inquiry that there is probable cause to believe that the said FRANCIS LABADIE and ALBERT BUDAY, as councilmen, during the time aforesaid, received money, gifts and gratuities paid by the owners, operators, agents, or employees, amounting to sixty-two hundred dollars ($6200.00) each, and upwards, in furtherance of an agreement and understanding between the said FRANCIS LABADIE and ALBERT BUDAY, as councilmen, and RUSSELL TRILCK, his servants, agents and employees, Paul Sackenheim and Joe Kovalchik, alias Bookie Joe, and certain individuals who were engaged in violating the criminal laws of the State of Michigan, whereby the said councilmen, FRANCIS LABADIE and AL-

BERT BUDAY, did permit the commission of illegal, unlawful and criminal acts, in said city and county aforesaid, which were of a very flagrant nature.

13. I further find from the sworn testimony and evidence given before me upon said inquiry that during the aforesaid time, the above mentioned WILLIAM W. VOISINE, FRANCIS LABADIE, and ALBERT BUDAY did employ, engage, and use one WILLIAM MONTRY as their medium, means, and contact man with RUSSELL TRILCK, his servants, agents and employees, and with PAUL SACKENHEIM, JOE KOVALCHIK, alias Bookie Joe, and other individuals engaged in the aforesaid illegal enterprises, and did conspire with RUSSELL TRILCK, PAUL SACKENHEIM, JOE KOVALCHIK, alias Bookie Joe, and other individuals, and with each other, to do acts generally designed and calculated to interfere with the orderly process of the administration of law in the city of Ecorse, county and state aforesaid, contrary to the laws of the State of Michigan, and against the peace and dignity of the people of the State of Michigan. (Sec. 750.505, CL 1948)

I, therefore, recommend, pursuant to the statute in such case made and provided, that you take all necessary legal steps to remove WILLIAM VOISINE, FRANCIS LABADIE and ALBERT BUDAY from their respective executive and legislative offices, as mayor and councilmen of the City of Ecorse, County of Wayne, State of Michigan.

Theodore R. Bohn
Circuit Judge, acting as one-man grand jury pursuant to the laws of the State of Michigan.

Dated at Detroit, Michigan
this 23rd day of October 1956.

STATE OF MICHIGAN }
COUNTY OF WAYNE } ss.

THEODORE R. BOHN, being duly sworn deposes and says that he has read the foregoing findings by him subscribed and that the same is true of his own knowledge, except as to those matters as alleged to be on information and belief, and as to those matters, he believes them to be true.

Theodore R. Bohn
Circuit Judge, Acting under Sections 767.3, 767.4, and all other sections of the Compiled Laws of the State of Michigan for the year 1948, as amended.

Subscribed and sworn to before me this 23rd day of October A.D. 1956 Dan DeVogelaw, Notary Public, Wayne County, Michigan.
My commission expires 1/10/58.

EXECUTIVE ORDER

1956 - 8

WHEREAS, there has been served upon me by the Honorable Theodore Bohn, one of the Judges of the Third Judicial Circuit, now conducting an inquiry under and in pursuance of Sections 767.3 and 767.4 of the Compiled Laws of Michigan of 1948, as amended, written findings, that there appears to him to be probable cause to believe that one Elmer Korn, as a Councilman of the City of Ecorse, County of Wayne, State of Michigan, has been guilty of malfeasance in the performance of his office as a Councilman of said City, and

WHEREAS, Section 767.4, Compiled Laws of Michigan of 1948, as amended, provides that said finding shall be sufficient complaint as a basis for removal proceeding against such official and requires that I shall proceed in the method prescribed by law for a hearing and determination of said charges,

IT IS HEREBY ORDERED and directed that the Honorable Thomas M. Kavanagh, Attorney General of the State of Michigan, do conduct an inquiry into the charges made in said finding as provided for in Section 201.7 of Compiled Laws of Michigan of 1948, as amended, and, as provided in said section, the said Attorney General shall give at least eight (8) days' notice to the said Elmer Korn of the time and place at which he will proceed to the examination of the witness in relation to such charges before the Judge of Probate herein appointed.

IT IS FURTHER ORDERED and directed that the said Attorney General, at the time of giving such notice, shall serve upon the said Elmer Korn a copy of this Executive Order and of the said charges as provided for by law so that the said Elmer Korn may be given an opportunity to be heard in his defense.

IT IS FURTHER ORDERED that the Honorable John W. Conlin, Probate Judge of Washtenaw County, Michigan, be and hereby is appointed to conduct the proceedings in connection with the examination of witnesses and the taking of testimony in relation to said charges and, as provided by law, the said Probate Judge shall proceed to take the testimony of witnesses produced before him by the Attorney General and by said Elmer Korn, whereupon such testimony shall be certified by the said Judge of Probate

to be a correct transcript of the testimony so taken and when so certified shall be delivered by the said Judge of Probate to the said Attorney General, who shall transmit the same with a summary of such testimony to me, all of which proceedings in said matter shall be as provided for by law.

Given under my hand and the Great Seal of the State of Michigan, this twenty-fifth day of October, in the Year of Our Lord, One Thousand Nine Hundred Fifty-Six, and of the Commonwealth the One Hundred Twentieth.

/s/ G. Mennen Williams
GOVERNOR

[Seal]

BY THE GOVERNOR:
/s/ Sidney H. Woolner
DEPUTY SECRETARY OF STATE

Appendix "C," attached to Complaint filed in United St
District Court in Cause of William W. Voisine et al
John W. Conlin, G. Mennen Williams, Governor, et

Information filed in the Circuit Court for the Count
Wayne in the cause of People of the State of Michi
v. William D. Voisine, et al.

(Filed, Dec. 21, 1956)

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN,

- vs -

WILLIAM W. VOISINE, ALBERT BUDAY, FRANCIS LABADIE, WILLIAM JONES, WALTER CHASE, JOHN BADER, PATRICK SLITTI, NICK STROIA, GREELIE DUKES, HARRY MONKS, IRVIN STEFFES, ALVIN GILLMAN, ROSCOE BOBO, ROOSEVELT LACKEY, JOSEPH KOVALCHIK, PAUL SACKENHEIM, J. C. WALLS, ROBERT NEAL, RUDY HICKEY; JOHN DOE No. 3, JOHN DOE No. 4, JOHN DOE No. 5, JOHN DOE No. 6, JOHN DOE No. 7; MARY ROE No. 1, MARY ROE No. 2, MARY ROE No. 3, MARY ROE No. 4, and MARY ROE No. 5, Defendants.

No. 34,092

(Filed, Dec. 21, 1956)

Edgar M. Branigin, Clerk

INFORMATION.

STATE OF MICHIGAN }
COUNTY OF WAYNE } ss.

In the name of the People of the State of Michigan, THOMAS M. KAVANAGH, Attorney General of the State of Michigan, and GERALD K. O'BRIEN, Prosecuting Attorney in and for the said County of Wayne, who prosecute for and on behalf of the People of the said State in said Court, come now here in said Court in the December term thereof, A.D. 1956, and give the said Court to understand and be informed that heretofore, to-wit: Between the 10th day of November, A.D, 1953 and on divers other days between that time and the 28th day of September, A.D. 1956, WILLIAM W. VOISINE, ALBERT BUDAY, FRANCIS LABADIE, WILLIAM JONES, WALTER CHASE, JOHN BADER, PATRICK SLITTI, NICK STROIA, GREELIE DUKES, HARRY MONKS, IRVIN STEFFES, ALVIN GILLMAN, ROSCOE BOBO, ROOSEVELT LACKEY, JOSEPH KOVALCHIK, PAUL SACKENHEIM, J. C. WALLS, ROBERT NEAL, RUDY HICKEY, JOHN DOE No. 3, JOHN DOE No. 4, JOHN DOE No. 5, JOHN DOE No. 6, JOHN DOE No. 7, MARY ROE No. 1, MARY ROE No. 2, MARY ROE No. 3, MARY ROE No. 4, and MARY ROE No. 5, and divers other persons, late of the City of Ecorse, County and State aforesaid, did wickedly, maliciously and feloniously conspire, combine, confederate and agree together with WILLIAM MONTRY, RUSSELL T. TRILCK, MARIE TRILCK and ANDREW COOK, and with each other, and with divers other persons, to obstruct justice, in that he, the said WILLIAM VOISINE, being then and there a public and executive officer of the said city of Ecorse, county and state aforesaid, to-wit: the Mayor of said city of Ecorse, county and state aforesaid, having theretofore been duly elected to the said office of

Mayor, and having qualified therein and acted in his capacity as mayor of said city during the period of time from November 10, 1953 until September 28, 1956; and he, the said ALBERT BUDAY, being then and there a public and legislative officer of the city of Ecorse, county and state aforesaid, to-wit, a member of the City Council for all or a portion of the time set out in the dates aforesaid; and he, the said FRANCIS LABADIE, being then and there a public and legislative officer of the city of Ecorse, county and state aforesaid, to-wit, a member of the City Council for all or a portion of the time set out in the dates aforesaid; and he, the said WILLIAM JONES, being then and there a public and executive officer of the city of Ecorse, county and state aforesaid, to-wit, the City Controller, for all or a portion of the time set out in the dates aforesaid; and he, the said WALTER CHASE, being then and there a public and executive officer of the city of Ecorse, county and state aforesaid, to-wit, the city Purchasing Agent, for all or a portion of the time set out in the dates aforesaid; and he, the said JOHN BADER, being then and there a public and executive officer of the city of Ecorse, county and state aforesaid, to-wit, Personnel Director, for all or a portion of the time set out in the dates aforesaid; and he, the said PATRICK SLITTI, being then and there a public and executive officer of the city of Ecorse, county and state aforesaid, to-wit, a member of the Police and Fire Commission during all or a portion of the time set out in the dates aforesaid; and he, the said NICK STROIA, being then and there a public and executive officer of the city of Ecorse, county and state aforesaid, to-wit, a member of the Police and Fire Commission during all or a portion of the time set out in the dates aforesaid; and he, the said GREELIE DUKES, being then and there a public and executive officer of the city of Ecorse, county and state aforesaid, to-wit, a member of the Police and Fire Commission during all or a portion of the time set out in the dates

aforesaid; and he, the said HARRY MONKS, being then and there a public and executive officer of the city of Ecorse, county and state aforesaid, to-wit: a member of the Police and Fire Commission during all or a portion of the time set out in the dates aforesaid; and he, the said IRVIN STEFFES, being then and there a public and executive officer of the city of Ecorse, county and state aforesaid, to-wit, a member of the Police and Fire Commission during all or a portion of the time set out in the dates aforesaid; and he, the said ALVIN GILLMAN, being then and there a public and executive officer of the city of Ecorse, county and state aforesaid, to-wit, Chief of Police of the Ecorse Police Department, for all or a portion of the time set out in the dates aforesaid; and he, the said ROSCOE BOBO, being then and there a public and executive officer of the city of Ecorse, county and state aforesaid, to-wit, Inspector of the city of Ecorse police department for all or a portion of the time set out in the dates aforesaid; and he, the said ROOSEVELT LACKEY, being then and there a public and executive officer of the city of Ecorse, county and state aforesaid, to-wit, Deputy Chief of Detectives of the city of Ecorse police department for all or a portion of the time set out in the dates aforesaid; and he, the said ROBERT NEAL, being then and there a public and legislative officer of the city of Ecorse, county and state aforesaid, to-wit, a member of the City Council for all or a portion of the time set out in the dates aforesaid; and he, the said RUDY HICKEY, being then and there a public and legislative officer of the city of Ecorse, county and state aforesaid, to-wit, a member of the City Council for all or a portion of the time set out in the dates aforesaid; all of whom were then duly elected, appointed and qualified, and acting in their respective official capacities during such period or part of such period of time; and they, the said JOSEPH KOVALCHIK and PAUL SACKENHEIM and divers other persons, being then and there in

said city of Ecorse, county and state aforesaid, were engaged in keeping or maintaining a gaming room or gaming table or a game of skill or chance, or partly of skill and partly of chance, used for gaming, for hire, gain or reward, to-wit, handbooks wherein bets could be made upon horse races, during all or a portion of the time set out in the dates aforesaid, in violation of the laws of the State of Michigan, to-wit, Section 750.303, Compiled Laws 1948; and who were keeping, maintaining, operating or occupying a building or room or part thereof, or place, with apparatus, books or devices for registering bets, or buying or selling pools upon the result of a trial or contest of skill, speed or endurance, or upon the result of a game, or contest, to-wit, horse races, in violation of the laws of the state of Michigan, to-wit, Section 750.304, Compiled Laws 1948; and he, the said J. C. WALLS, and divers other persons, being then and there in the city of Ecorse, county and state aforesaid, engaged in or assisted and enabled the setting up or promotion or management, within the state of Michigan and the said county and city, of a certain lottery or gift enterprise for money, to-wit, the mutuel numbers business, during all or a portion of the time set out in the dates aforesaid, in violation of the laws of the State of Michigan, to-wit, Section 750.301, Section 750.302, Section 750.303, Section 750.304, Section 750.305, and Section 750.306, Compiled Laws of 1948, and divers other persons who engaged in or assisted and enabled in the setting up or promotion or management, in the city of Ecorse, county and state aforesaid of a gaming room or gaming table, or a game of skill or chance, or partly of skill and partly of chance, used for gaming for hire, gain or reward, to-wit, barbut and other dice games, and poker and other card games, in violation of the laws of the State of Michigan, to-wit, Section 750.303, Compiled Laws of 1948; and they, the said WILLIAM VOISINE, ALBERT BUDAY, FRANCIS LABADIE, WILLIAM JONES, WALTER CHASE, JOHN BADER,

PATRICK SLITTI, NICK STROIA, GREELIE DUKES, HARRY MONKS, IRVIN STEFFES, ALVIN GILLMAN, ROSCOE BOBO, ROOSEVELT LACKEY, ROBERT NEAL and RUDY HICKEY, public officials of the said city of Ecorse, county and state aforesaid, then and there well knowing that said keeping, maintaining, operating, or assisting in keeping, maintaining, and operating handbooks, mutuel numbers, barbut and other dice games, poker and other card games, and other gambling games, was a violation of the laws of the State of Michigan and the ordinances of the said city of Ecorse; and they, the said public officials and policemen, well knowing that it was their respective duty to use all lawful means within their respective power to stop and prevent the operation of such keeping or maintaining of a gaming room, gaming able, games of skill or chance, or partly of skill and partly of chance, used for gaming, and to prevent the operation or the keeping of gambling devices for hire, gain or reward, and the promotion, maintaining, management or operation of a lottery or gift enterprise for money in said city of Ecorse, in said County of Wayne, which are contrary to the laws of the State of Michigan, and the ordinances of the city of Ecorse; and also knowing that it was the official duty of the various public officials and policemen herein named, to prevent the operation and maintenance of said unlawful and illegal enterprises in said city of Ecorse, Wayne County, Michigan, they, the said public officials and police officers, knowingly permitted, suffered, assisted, enabled, or allowed said gambling games, devices, lotteries as aforesaid to flourish, operate, and be maintained by the aforesaid individuals and other persons in return for bribes, gifts, and gratuities and payments of money, and did conspire to do other acts generally calculated to interfere with the orderly process of the administration of law in the said city of Ecorse, county and state aforesaid, contrary to the laws of the State of Michigan and against the

peace and dignity of the People of the State of Michigan (750.505 C. L. 1948).

Thomas M. Kavanagh
Attorney General of the State of Michigan

Gerald K. O'Brien
Prosecuting Attorney for the County of Wayne

By Ralph Garber

PEOPLE

v. No. 34,092

WILLIAM W. VOISINE
et al

LIST OF WITNESSES

William Montry	Dave Edwards
Russell Trilck	Ann Hammerschmidt
Marie Trilck	Roy Dunn
Andrew Cook	William J. Evans
Robert McWhirter	Emery Evans
Emma Brown	Leonard Evans
Mary Johnson	Joseph Eisele
Edward Bass	Conrad Swearingen
Carl Robinson	Louis Kozma
Ruby Lary	Francis Nolan
William Martin	Richard Oldfield
William Page	Ann Secor

APPENDIX "B"

Notice of Motion for Preliminary Injunction and for formation of Three-Judge Court, filed in United States District Court in Cause of William W. Voisine, et al., v. John W. Conlin, G. Mennen Williams, Governor, et al:

(Filed with Complaint, Jan. 14, 1957)

To the above named defendants and their attorneys:

YOU WILL PLEASE TAKE NOTICE that the complainants herein will move the Court at its Court Room in the Federal Building of the City of Detroit, County of Wayne, State of Michigan, to whom the same may be assigned on Monday, January 21, 1957, at 9:30 o'clock A.M., or as soon thereafter as counsel can be heard, for the formation of a three-judge court as provided for under the United States Code and the Federal Rules of Civil Procedure, and for a preliminary injunction and stay of proceedings against the complainants herein which are pending before the Honorable John W. Conlin, Probate Judge, until the matters set forth in the bill of complaint filed herein can and may be determined by the judge to whom this matter may be assigned, or by the three-judge court which may be invoked under and by virtue of the statutes and rules named in said bill of complaint.

Complainants further represent and give notice that pending a hearing on the determination of the organization of a three-judge court to hear the matters set forth in this bill of complaint, that irreparable damage and injury can be done to them which under no circumstances can be remedied or repaired, and for which they have no adequate remedy at law; and they therefore pray that the District Judge to whom this matter shall be assigned issue forthwith his temporary restraining order without notice to the

defendants, restraining them from in any manner continuing with the removal proceeding described in said bill of complaint before the Honorable John W. Conlin, Washtenaw County Probate Judge, but not the criminal proceeding on file in the Circuit Court for the County of Wayne, until such date as it may be determined whether or not the complainants are entitled to an interlocutory injunction as prayed for herein.

That this motion is based upon the verified bill of complaint filed simultaneously herewith and upon all other documents and records to be assembled before said court as evidence in connection therewith.

/s/ Francis K. Young
FRANCIS K. YOUNG
Attorney for William W. Voisine,
Mayor of Ecorse
1657 Penobscot Building
Detroit 26, Michigan

/s/ Jerome P. Cavanagh
JEROME P. CAVANAGH
Attorney for Francis Labadie
600 Griswold Street
Detroit 26, Michigan

/s/ Michael A. Guest
MICHAEL A. GUEST
Attorney for Albert Buday
1832 Buhl Building
Detroit 26, Michigan

/s/ Joseph Freed
JOSEPH FREED
Attorney for Elmer Korn
2933 Cadillac Tower
Detroit 26, Michigan

January 11, 1957.

AFFIDAVIT OF FRANCIS K. YOUNG

STATE OF MICHIGAN)
COUNTY OF WAYNE) SS

FRANCIS K. YOUNG, being first duly sworn, deposes and says that he is attorney for William W. Voisine, Mayor of Ecorse, one of the complainants in the above entitled proceeding.

Deponent further says that the motion for the preliminary injunction is based upon the bill of complaint filed in this cause and the transcript of testimony which is in the process of being secured from Robert Rowley, Court Reporter for the Honorable John W. Conlin, and of the other documents and proceedings before the Honorable John W. Conlin, and certain documents and records in the proceeding generally referred to as the One-Man Grand Jury proceeding in addition to the criminal proceeding entitled People of the State of Michigan vs. William W. Voisine et al, in the Circuit Court for the County of Wayne.

Further the deponent sayeth not.

/s/ Francis K. Young
FRANCIS K. YOUNG
Attorney for William W. Voisine
Mayor of Ecorse

Subscribed and sworn to before me this
11th day of January, A.D. 1957.
Frederick R. Walter
Notary Public
My commission expires: Jan. 2, 1959.

APPENDIX "C"

Temporary Restraining Order without Notice, issued by District Judge Theodore Levin upon filing Complaint in cause of William W. Voisine et al. v. John W. Conlin, G. Mennen Williams, et al.

(Filed and entered, Jan. 14, 1957)

At a session of said Court held at the Federal Building in the City of Detroit, County of Wayne and State of Michigan, this 14th day of January, A.D., 1957.

PRESENT: HON. THEODORE LEVIN, United States District Judge.

Whereas, in the above named cause it has been made to appear by the verified complaint filed herein, which was on this 14th day of January, 1957, presented to the Honorable THEODORE LEVIN, one of the Judges of the United States District Court for the Eastern District of Michigan, Southern Division, that a restraining order preliminary to hearing upon motion for a preliminary injunction and organization of a three-judge court should issue without notice, because immediate and irreparable injury, loss and damage will result to the complainants herein before the matters set forth in said bill of complaint can be determined by this court, in that said complainants may be removed from their respective offices in the City of Ecorse, namely, that of Mayor and of Councilmen, respectively, without any adequate remedy at law, without due process of law and without there being any legal remedy available to correct any mistake of legal process or judicial decision that might be made in connection with said removal proceeding.

NOW, THEREFORE, on motion of the complainants it is ordered that the defendants John W. Conlin, G. Mennen Williams, Theodore R. Bohn and Thomas M. Kavanagh and their attorneys, and each of them, their agents, successors, deputies and servants and all persons acting by, through or under them, be and they are hereby restrained until Jan. 21, 1957, or until such further date as this court may determine, from and in any manner continuing with the removal and/or ouster proceedings against the complainants herein named before the Honorable John W. Conlin, Probate Judge for the County of Washtenaw, acting for and in behalf of G. Mennen Williams, Governor of the State of Michigan, until the matters set forth in said bill of complaint filed herein may be determined by this court or by a three-judge court which may be organized in accordance with the prayer for relief contained in the bill of complaint filed herein.

This temporary restraining order without notice is issued by this court on the 14th day of January A.D., 1957, at 12:10 o'clock P.M. in pursuance to Federal Rules of Civil Procedure No. 65, and shall expire 12:00 o'clock noon on Jan. 21, 1957, unless the same is renewed and is granted without the filing of a penal bond because of the fact that nothing except personal constitutional rights is involved.

THEODORE LEVIN
United States District Judge

FRANK J. DINGELL, Clerk
By PAULINE L. OGDEN
Deputy Clerk

APPENDIX "D"

Transcript of Conference at Chambers of District Judge Theodore Levin, in Cause of William W. Voisine, et al. v. John W. Conlin, G. Mennen Williams, et al:

(Jan. 15, 1957)

Conference at Chambers before the Honorable Theodore Levin, District Judge, on Wednesday, January 15, 1957, at 3:50 o'clock in the afternoon.

Present: Mr. Joseph A. Sullivan, Deputy Attorney General.

Mr. Nicholas V. Olds, Assistant Attorney General.

THE COURT: Mr. Sullivan, you are the Deputy Attorney General?

MR. SULLIVAN: Yes, sir.

THE COURT: And Mr. Olds, is an Assistant Attorney General. These men have just come in to see me with respect to a date for the Three-Judge Court hearing on the application for a temporary and more permanent form of injunction. Judge Simons, the Chief Judge of the Court of Appeals of this circuit has designated himself and Chief District Judge Lederle and me to constitute the court. And he has designated January 29 at 10:00 A.M. for the hearing. He said that he would grant an earlier date if the matter were imperative to be held earlier.

Mr. Sullivan and Mr. Olds, in behalf of all of the defendants—and they said they are authorized to speak for all the defendants—have stated that they are agreeable that the restraining order which has been issued by me shall

remain in effect until the matter is disposed of by the Three-Judge Constitutional Court.

I have asked these gentlemen, and I shall today request the attorneys for the plaintiff, to have all motions, if there are to be any, and all briefs presented in triplicate not later than one week before the hearing date,—and that would be the 22nd of January.

APPENDIX "E"

Defendants' Answer to Complaint in cause of William W. Voisine et al. v. John W. Conlin, G. Mennen Williams, Governor, filed in United States District Court:

(Filed, Jan. 22, 1957)

ANSWER

Now come John W. Conlin, Probate Judge of Washtenaw County, G. Mennen Williams, Governor of the State of Michigan, Theodore R. Bohn, Circuit Judge of Wayne County, and Thomas M. Kavanagh, Attorney General for the State of Michigan, defendants herein, and make answer to the matters set forth in the complaint filed in this cause by the plaintiffs above named, reserving unto themselves, however, the rights and benefits of the motion to dismiss said complaint filed simultaneously herewith, and say:

1. Defendants deny that this honorable court has jurisdiction over either the complainants and defendants or the subject matter in the complaint and is therefore without authority to grant the relief sought by complainants.

2. Defendants deny that this honorable court has jurisdiction to grant the injunctive relief sought, and further deny irreparable damage and injury will be done to the complainants herein unless said injunctive relief is granted.

3. Defendants admit the allegations contained in paragraph 3, but say that the contents thereof are irrelevant, immaterial and impertinent.

4. Defendants admit the allegations contained in paragraph 4, but say that the contents thereof are irrelevant, immaterial and impertinent.

5. Defendants admit the allegations contained in paragraph 5, but say that the contents thereof are irrelevant, immaterial and impertinent.

6. The defendants admit the allegations in paragraph 6, but say that the contents thereof are irrelevant, immaterial and impertinent.

7. The defendants admit the allegations contained in paragraph 7, but say that the contents thereof are irrelevant, immaterial and impertinent.

8. The defendants admit the allegations in paragraph 8, but say that the contents thereof are irrelevant, immaterial and impertinent.

9. The defendants admit the allegations of paragraph 9.

10. Defendants admit the allegations contained in paragraph 10.

11. Defendants admit that portion of paragraph 11 alleging that the grand jury, pursuant to the order of the Wayne Circuit Court, commenced investigating alleged illegal practices in the City of Ecorse. Defendants deny the balance of paragraph 11 and ask that it be stricken as purely argumentative. Further answering the allegations of paragraph 11, defendants say that, pursuant to the laws of the State of Michigan, the Grand Juror, the Honorable Theodore R. Bohn, did appoint Assistant Attorneys General, Assistant Prosecuting Attorneys, State Police Officers and Detroit Police Officers to assist him in conducting the judicial investigation.

12. Defendant Theodore R. Bohn, Circuit Judge of Wayne County, admits that complainants were subpoenaed

to appear before the grand jury; he denies, however, that said complainants were not advised of their constitutional rights and says further that it is not incumbent upon the Grand Juror to inform complainants of their constitutional rights; he further says that each of the complainants at all times had an opportunity to consult and did consult with counsel of his own choice. He denies that complainants were questioned at great length pertaining to their own personal affairs, and further denies that such questioning would be a violation of the Fifth Amendment to the constitution of the United States. As to the balance of the defendants, they have no knowledge or information upon which to answer the allegations in said paragraph and therefore neither affirm nor deny said allegations, but leave complainants to their proofs. Defendants further say that the allegations in paragraph 12 of the Complaint are impertinent and argumentative and should be stricken.

13. Defendant Theodore R. Bohn denies each and every allegation in paragraph 13, and further says that such allegations are argumentative and impertinent and should be stricken. Further answering said paragraph, Defendant Theodore R. Bohn says that complainants, along with numerous other witnesses, appeared before him pursuant to subpoenas authorized by law and issued by him, and that at all times they were treated as witnesses giving testimony under oath. As to the balance of the defendants, they have no knowledge or information upon which to answer the allegations in said paragraph and therefore neither affirm nor deny said allegations, but leave complainants to their proofs.

14. Defendants admit that the grand jury issued a grand juror's warrant against the four complainants pursuant to the laws of Michigan, but say that the statute pursuant to which such warrants were issued is Compiled Laws of 1948, Mason's 1954 Supp., section 767.4.

Defendants further answer that the warrant as to the complainants, William W. Voisine, Francis Labadie and Albert Buday was issued on September 28, 1956, and the warrant as to complainant Elmer Korn was issued on October 22, 1956.

Defendants further answer that the appellation "unique" preceding the words "one-man grand jury," is argumentative and should be stricken.

15. Defendants admit that the quoted portion of paragraph 15 is a recitation of a portion of the one-man grand jury statute, viz., section 767.4, Compiled Laws of 1948, Mason's 1954 Supplement, but deny that this section is pertinent to the complaint.

16. Defendants deny that the one-man grand jury commences with Compiled Laws of 1948, section 767.1, and concludes with section 767.6, but say that said grand jury statute commences with section 767.3 and concludes with section 767.6b, Compiled Laws of 1948, Mason's 1954 Supp. Defendants say further that the statutes under which the one-man grand jury acts are irrelevant, immaterial and impertinent.

17. Defendants deny that the allegations contained in paragraph 17 are an accurate recitation of the contents of the aforesaid one-man grand jury law, and defendants refer to the text of said law for determining the context thereof.

18. Defendants deny the allegations contained in paragraph 18 and answer further that the allegations contained therein are irrelevant, immaterial, impertinent and argumentative, and should be stricken.

19. Defendants admit the allegations contained in paragraph 19 pertaining to the authority of the grand jury to indict persons for crimes and to make findings which form the basis for removal hearings against public officials, but deny the balance of said paragraph. Defendants answer further that said allegations are impertinent, argumentative and should be stricken.

20. The defendants deny each and every allegation contained in paragraph 20, and further answer that the allegations contained therein are impertinent and argumentative, and should be stricken.

21. Defendants deny each and every allegation contained in paragraph 21, and further answer that the allegations contained therein are impertinent, scandalous and argumentative, and should be stricken.

22. Defendants deny each and every allegation contained in paragraph 22 and further answer that the allegations contained therein are scandalous, incoherent and argumentative, and should be stricken.

23. Defendants admit that portion of paragraph 23 stating that complainants attended a preliminary examination, but answer that said examination was held at the request of the complainants. Defendants admit that said examination was concluded on or about November 26, 1956, but deny that the Justice of the Peace determined that there was probable cause to hold said complainants for trial. Defendants answer further that the said Justice determined that crimes not cognizable by a Justice of the Peace had been committed, and that there was probable cause to believe that said complainants committed these crimes, and therefore bound said complainants over to Circuit Court for trial.

24. Defendants admit the allegations contained in paragraph 24.

25. Defendants deny the allegations contained in paragraph 25, but say in answer that the said removal charges were made by the Honorable Theodore R. Bohn, the one-man grand juror, and forwarded by him to the Governor; that after having considered said charges or findings, the Governor issued an Executive Order appointing the Honorable John W. Conlin to take testimony with regard thereto, and the Honorable Thomas M. Kavanagh to represent the State.

26. Defendants admit that the complainant, Elmer Korn, was indicted by the grand jury upon a different charge, viz., accepting a bribe, and that his removal is predicated upon this ground. Defendants neither affirm nor deny the balance of the allegations contained in paragraph 26 but leave complainants to their proofs, but defendants further answer that the allegations contained therein are impertinent, incoherent and argumentative, and should be stricken.

27. Defendants admit the allegations contained in paragraph 27 and answer further that the removal proceedings were continued from November 13, 1956, to November 21, 1956, then to January 7, 1957, then to January 9, 1957, then to January 23, 1957, all at the request of complainants. Presently the matter stands continued pending the outcome of complainants' suit in this court.

28. Defendants admit the allegations contained in paragraph 28, but answer further that said allegations are impertinent. Further answering said allegations, Defendant John W. Conlin says that he has no authority to pass upon said motions and objections but has noted them in the record which will be sent to the Governor. Further answer-

ing said allegations, Defendant G. Mennen Williams says that he has had no opportunity to pass upon said allegations, but will do so when they are forwarded to him pursuant to the law of the State of Michigan.

29. Defendants admit that complainants objected to proceeding with the removal proceedings, but answer further that such allegations are impertinent and argumentative, and should be stricken.

30. Defendants deny each and every allegation contained in paragraph 30, and further answer that complainants have a complete and adequate remedy at law in the State courts if they are wrongfully removed from office.

31. Defendants neither admit nor deny the allegation contained in paragraph 31 pertaining to the reply and motion containing constitutional objections to the removal proceedings but leave complainants to their proofs. Defendants further answer that such allegation is impertinent to the complaint. Defendants deny that any statute of the State of Michigan requires the Attorney General to furnish to the complainants subpoenas in connection with the removal hearing.

Defendants further answer that the defendant, Thomas M. Kavanagh, has not ignored nor neglected requests in behalf of the complainants, but has pointed out to counsel for plaintiffs there is no such requirement under the laws of the State of Michigan and that the request for subpoenas should be directed to a justice of the peace or prosecuting attorney.

Defendants further answer that counsel for Complainant William W. Voisine has conferred with the Honorable Thomas Kenney, one of the Judges of the Common Pleas

Court for the City of Detroit, and has been assured that said Judge would issue the required subpoenas.

32. Defendants neither admit nor deny the allegations contained in paragraph 32 but leave complainants to their proofs. Defendants further answer that the allegations contained in paragraph 32 are argumentative and impertinent, and should be stricken.

Defendants further answer that witnesses appeared at the preliminary examination on behalf of complainants while the grand jury was in session and testified to material facts in issue and to character.

Further answering, defendants say that the sessions of the grand jury constitute no legal impediment to the securing of witnesses by the complainants to testify in their behalf in the removal proceedings, and that said complainants are free to subpoena any witnesses they desire in the manner set forth in the answer to paragraph 31.

33. Defendants deny that the charges against complainants in the proceedings arise out of an unconstitutional statute or that they are vague, general and indefinite and do not apprise complainants of the specific nature of the charges. Defendants admit that a request for a more specific bill of particulars on behalf of the Complainant Francis Labadie was denied by the defendant, the Honorable John W. Conlin, but deny that any such request was made by the other complainants or ruled upon by the Honorable John W. Conlin.

Defendants further answer that as to the complainants, William W. Voisine, Francis Labadie and Albert Buday, the removal is predicated on charges of conspiring to obstruct justice in a warrant drawn according to the laws

of the State of Michigan and upon which a lengthy and exhaustive preliminary examination was held, lasting from October 23, 1956, until November 15, 1956, at which time counsel for the complainants conducted a searching, detailed cross-examination pertaining to the charges in the warrant. Defendants further answer that a transcribed record of said examination can be made available to the court, if deemed necessary.

34. Defendants admit that the complainants filed with the defendant, John W. Conlin, certain verified documents stating that complainants would not be able to obtain witnesses to testify in their behalf, but as to their contents, defendants leave proof thereof to complainants. Defendants deny that because said proposed witnesses are also under indictment they are precluded from being subpoenaed and testifying in the removal proceedings.

Defendants further answer that the alleged inability of complainants to compel other persons under indictment to testify in their behalf constitutes a denial of due process. As to the balance of the allegations, defendants answer that they are impertinent and argumentative, and should be stricken.

35. Defendants admit that portion of paragraph 35 pertaining to the ruling of Honorable John W. Conlin that the removal proceedings before the Governor are quasi-judicial.

Defendants deny the balance of the allegations contained in paragraph. Defendants further answer that the said balance of these allegations are incoherent, argumentative and conclusions of law, and should be stricken.

36. Defendants deny each and every allegation contained in paragraph 36.

37. Defendants deny each and every allegation in paragraph 37. Defendants further answer that the allegations contained in paragraph 37 are argumentative and constitute conclusions of law, and should be stricken.

38. Defendants deny each and every allegation contained in paragraph 38, and further answer that the allegations contained therein are scandalous, impertinent, incoherent and argumentative, and should be stricken.

Defendants further answer that there has been no delay in the criminal proceedings against the complainants; that the filing of the information in the criminal case is in no way related to the removal proceedings, nor is the arraignment on the information related to the removal proceedings.

Defendants further answer that the complainants have been granted every request made for a continuance, and that as of the date of this answer no testimony has yet been taken which would be the basis for removing complainants from office because of the dilatory tactics of complainants.

Defendants further answer that the letter from the Honorable G. Mennen Williams to the Honorable John W. Conlin, which is attached to this answer as Appendix I, further refutes the allegation of undue haste in the removal proceedings by the defendants.

39. Defendants admit that motions to quash on behalf of the complainants, William W. Voisine and Francis Labadie, have been filed, but deny that complainant Elmer Korn has demanded that an information against him be filed, and further that an information against said Elmer Korn was filed by the prosecuting attorney's office on January 11, 1957.

Defendants further answer that the motion to quash the informations in the criminal proceedings are in no way related to or connected with the removal proceedings.

Defendants further answer that the informations charging the respective complainants with crimes against the State of Michigan have been prepared and given to the Prosecuting Attorney's office in Wayne County and filed in the normal course of business.

40. Defendants deny the allegation in paragraph 40 pertaining to exhausting all legal remedies available to them. Defendants further deny that complainants have not sought nor taken advantage of dilatory tactics in the removal proceedings. Defendants admit that complainants have not delayed the criminal proceedings in the Wayne Circuit Court, but defendants further answer that all such allegations, with the exception of exhausting legal remedies, are impertinent and irrelevant and should be stricken.

41. Defendants deny each and every allegation contained in paragraph 41. Defendants further answer that the allegations contained therein are impertinent, scandalous, argumentative, and are conclusions of law, and should be stricken.

Defendants further answer that the laws of the State of Michigan require a grand juror to make written findings of fact when he finds from the evidence that there is probable cause to believe that any public officer has been guilty of misfeasance or malfeasance in office or willful neglect of duty; that the laws of the State of Michigan require the Governor to act upon said findings of fact. Defendants further answer that there is no connection in law between the removal proceedings and the criminal charges now pending against complainants.

42. Defendants admit that motions to quash subpoenas before the Honorable Theodore R. Bohn were filed and heard by the one-man grand juror on November 8, 1956. Defendants further answer that time was requested by counsel for one of the witnesses within which to file a brief and an agreement was made between the court and counsel that no decision would be given until the said brief was filed. As of the date of this answer, said brief has not been filed and therefore no decision made on the motion to quash.

Defendants further answer that the allegations in paragraph 42 are impertinent and irrelevant, and should be stricken.

43. Defendants deny each and every allegation contained in paragraph 43.

Defendants further answer that the taking of testimony by the Honorable John W. Conlin in connection with the removal proceedings does not deprive complainants of any constitutional rights, and further that complainants have a complete and adequate remedy under the laws of the State of Michigan for an unwarranted or arbitrary removal from public office.

44. Defendants deny each and every allegation in paragraph 44. Defendants further reply that there are no private nor property rights in a political office, and further reply that the allegations contained in paragraph 44 are incoherent, disconnected and argumentative, and should therefore be stricken.

45. Defendants deny that complainants are without any remedy except in a federal court of equity, and deny that the complainants' constitutional rights are involved, and further deny that a large sum of money is involved.

46. Defendants deny that complainants had only from January 9, 1957, until January 14, 1957, to present their petition to this court. Defendants answer further that complainants have had since November 1, 1956, when they were served with notice of removal proceedings (see paragraph 24 of complaint) within which to file their complaint in federal court or exhaust their State remedies.

Defendants neither affirm nor deny the allegation that, as a result of the time fixed, complainants have not been able to formulate and present to this court in the best form that they would desire a complaint which would chronologically and fairly put their story in the issue to this court, but leave complainants to their proofs.

47. Defendants admit that removal proceedings are based, in substance, upon the charges in the criminal cases now pending against complainants, but deny that this is in any way a violation of the constitutional rights of the complainants.

48. Defendants neither admit nor deny the allegations contained in paragraph 48, having no knowledge upon which to answer such allegation, and therefore leave the complainants to their proofs.

49. Defendants deny the allegation contained in paragraph 49 indicating that complainants have not had an opportunity to assemble and bring together all of the documents and instruments necessary for a full understanding by this court of the issues and problems involved, and say further that the allegations in this paragraph are irrelevant and immaterial, and should be stricken.

Defendants answer further that complainants have had approximately two and one-half months in which to pre-

pare and present to this court a complaint entailing all of the pertinent data necessary to support the theory of the complainants that this court has the authority to enjoin removal proceedings.

50. Defendants deny each and every allegation in the complaint not heretofore specifically denied and leave complainants to their proofs thereof.

AFFIRMATIVE DEFENSES AND SPECIAL MATTERS

In addition to the foregoing, the defendants will raise in their behalf the following affirmative defenses and special matters:

1. This honorable court, sitting as a court of equity in this cause, has no authority or jurisdiction, under the Constitution of the United States and the laws passed pursuant thereto, over proceedings instituted and pending before the Governor of the State of Michigan for the removal of the plaintiffs as elected public officials of the City of Ecorse, Wayne County, Michigan.

2. This honorable court has no authority to hear or determine the matters set forth in the complaint since such matters are of a political nature and thus are not justiciable.

3. The complaint filed herein by the complainants does not state a cause of action cognizable by this court either in equity or law.

4. The complaint filed herein by the complainants does not present to this court a substantial federal question calling for intervention and adjudication by this court.

5. The complaint is, in substance, a suit brought against the State of Michigan to enjoin it from exercising its sovereign political powers, and this court is without jurisdiction to hear, try or determine the matters set forth in the complaint.

6. Complainants have full, adequate and sufficient remedies at law under the legal and judicial processes of the State of Michigan, and complainants have failed to exhaust the remedies provided for them in the courts of the State of Michigan.

Wherefore, and by reason of all of which defendants deny that complainants are entitled to the relief for which they pray in their complaint, and defendants respectfully submit to this honorable court and pray that the said complaint be dismissed with costs by them herein sustained.

Thomas M. Kavanagh
Attorney General of the State of Michigan
By Joseph A. Sullivan
Joseph A. Sullivan
Deputy Attorney General
Nicholas V. Olds
Assistant Attorney General
Attorneys for the Defendants

Appendix "I," attached to Answer of Defendants filed in United States District Court in cause of William W. Voisine, et al. v. John W. Conlin, G. Mennen Williams, Governor, et al.

Letter from Governor Williams to John Conlin, Probate Judge.

(Dated, Nov. 20, 1956)

Appendix I

November 20, 1956

Honorable John Conlin
Judge of Probate
1300 Linwood
Ann Arbor, Michigan
Dear Judge Conlin:

By letter of November 15, 1956 I have received from Francis K. Young, attorney for William W. Voisine, a pleading designated as a "Reply and Motions" bearing on the removal proceeding against Mayor Voisine.

The pleading in general challenges the procedural steps taken in connection with the removal proceeding, and, more specifically, seeks to have the conduct of the hearing adjourned until the conclusion of the criminal prosecution directed against Mayor Voisine.

It is not clear whether the pleading is addressed to me or to you as the person appointed by me pursuant to the provisions of Section 201.7, CL '48. However, I have carefully examined it, and it is my opinion that the several objections contained therein do not provide a basis for dismissing or adjourning the removal proceeding.

Therefore, insofar as Mr. Young intended to submit the pleading to me for disposition, I do deny its several prayers for relief.

There are no well established rules of procedure for removal proceedings. However, in this instance it is possible that any of the four officials whose removal has been requested by Judge Bohn may file further motions to dismiss, adjourn, and etc. It is my request, and I do hereby authorize you to rule for me on any such motion, with the following standards in mind:

1. It is my opinion that the statutory requirements necessary to confer jurisdiction on me to consider the removal of the four officials have been met.

2. It is my opinion that the statutory requirements necessary to confer jurisdiction on the Attorney General to present the charges, and on you to conduct the hearing at which the evidence will be submitted, have been set.

3. The accused officials' constitutional rights will not, in my opinion, be violated by the conduct of the hearing at this time.

4. It is my wish that requests for adjournment based on the convenience or necessities of the parties or their counsel be granted at your discretion.

Sincerely,
/s/ G. Mennen Williams
Governor

Special Delivery

CC: Francis K. Young, Atty. 1657 Penobscot Bldg. Detroit. Attorney General Thomas M. Kavanagh.

(p85a is blank)

APPENDIX "F"

Defendants' Motion to Dismiss Complaint, filed in United States District Court in cause of William W. Voisine et al. v. John W. Conlin, G. Mennen Williams, Governor, et al.

(Filed, Jan. 22, 1957)

MOTION TO DISMISS

Now come John W. Conlin, a Probate Judge of the County of Washtenaw, State of Michigan, G. Mennen Williams, Governor of the State of Michigan, Theodore R. Bohn, a Circuit Judge of the Circuit Court for the County of Wayne, State of Michigan, and Thomas M. Kavanagh, Attorney General of the State of Michigan, by Thomas M. Kavanagh, Attorney General of the State of Michigan, Joseph A. Sullivan, Deputy Attorney General, and Nicholas V. Olds, Assistant Attorney General, and appearing specially in the above cause for the purposes of this motion, move this Honorable Court to dismiss the above cause and the complaint filed herein for the following grounds and reasons:

1. This Honorable Court, sitting as a court of equity in this cause, has no authority or jurisdiction under the Constitution of the United States and the laws passed pursuant thereto, over proceedings instituted and pending before the Governor of the State of Michigan for the removal of the plaintiffs as elected public officials of the City of Ecorse, Wayne County, Michigan.

2. This Honorable Court, sitting as a court of equity in this cause, has no authority to hear or determine the matters and things set forth in the complaint in so far as they

relate to the proceedings instituted and pending before the Governor of the State of Michigan for the removal of the plaintiffs from elective public offices of the City of Ecorse, Wayne County, Michigan, since said matters and things are of a political nature and thus are not justiciable.

3. This Honorable Court has no judicial power nor jurisdiction by its injunctive processes or by any other of its processes to restrain or enjoin the Governor of the State of Michigan from the performance of his executive, constitutional functions, said Governor, under our democratic system of government, being an independent and coeval branch of the government of the State of Michigan.

4. The complaint filed herein by the plaintiffs does not state a cause of action cognizable by this Court either in equity or law.

5. Complaint filed herein by the plaintiffs does not present to this Court a substantial federal question calling for the intervention and adjudication by this Court.

6. The above cause is, in fact and in substance, a suit brought against the State of Michigan to enjoin it from exercising its sovereign political powers, and this Court is without jurisdiction and without judicial power to hear, try or determine the matters and things set forth in the complaint, inasmuch as such power is denied to this Court by the provisions of the Eleventh Amendment to the Constitution of the United States.

7. The above cause is, in fact and in substance, a suit brought against the State of Michigan to enjoin it from exercising its political and sovereign powers and, as such, this Court does not have jurisdiction nor the judicial power to hear, try and determine the matters and things set forth

in the complaint because the State of Michigan, neither by legislative act nor by any other official act, has consented to be sued in the courts of the United States and is, in fact, immune from such suit brought by the plaintiffs in any of the courts of the United States.

8. The plaintiffs herein have full, adequate and sufficient remedies at law under the legal and judicial processes of the State of Michigan in which all of the allegations made by them in their complaint may be fully and completely adjudicated in an orderly manner; and said plaintiffs have failed, prior to the filing of this suit, to avail themselves of such legal and judicial processes and remedies and have failed to exhaust the remedies provided them in the courts of the State of Michigan.

9. The complaint of the plaintiffs apparently seeks to enjoin criminal proceedings pending in a court of the State of Michigan, namely, in the Circuit Court for the County of Wayne, and proceedings now pending before the Governor of the State of Michigan, contrary to the provisions of Title 28, United States Code, section 2283.

10. The matters in controversy set forth in the complaint of the plaintiffs do not exceed Three Thousand Dollars ($3,000.00), exclusive of interest and costs, as required by Title 28, United States Code, section 1331.

11. The complaint filed by the plaintiffs in this cause seeks to secure premature adjudication by this Court of legal matters, many of which may never become issues in any court of competent jurisdiction or in the conduct of the removal proceedings now pending before the Governor of the State of Michigan, and before the courts of the State of Michigan and the Governor of the State of Michigan

have had an opportunity to try, hear and determine such issues.

12. The complaint filed by the plaintiffs is faulty and does not merit the attention of this Court because it is a multifarious, incoherent, scandalous pleading, containing immaterial and argumentative allegations of fact and law, and attempting to put in one complaint and secure adjudication by this Honorable Court of unrelated allegation and issues of fact and law.

This motion is based upon the files and records of this cause and upon so much of the answer filed by the defendants as may be necessary for the determination of the issues presented herein.

By Thomas M. Kavanagh
Thomas M. Kavanagh
Attorney General, State of Michigan
By Joseph A. Sullivan
Joseph A. Sullivan
Deputy Attorney General
By Nicholas V. Olds
Nicholas V. Olds
Assistant Attorney General
Attorneys for Defendants

Dated at Lansing, Michigan,
January 22, 1957.

APPENDIX "G"

Reply of Plaintiff William W. Voisine, to Defendants' Motion to Dismiss, filed in United States District Court in Cause of William W. Voisine et al. v. John W. Conlin, G. Mennen Williams, Governor, et al.

(Filed, Jan. 29, 1957)

REPLY TO MOTION TO DISMISS

Now comes William W. Voisine by and through his attorney, Francis K. Young, and for answer to plaintiffs' Motion to Dismiss states:

1. He denies the allegations contained therein.

2. He denies the allegations contained therein.

3. He denies the allegations contained therein.

4. He denies the allegations contained therein.

5. He denies the allegations contained therein.

6. He denies the allegations contained therein.

7. He denies the allegations contained therein.

8. He denies the allegations contained therein.

9. Plaintiff denies that he seeks to restrain criminal proceedings pending in a court of the State of Michigan, but does claim that he desires to restrain and prevent a

hearing on the ouster and/or removal proceeding which will involve self-incrimination, in direct violation of the Fifth Amendment to the Constitution of the United States prior to the time that the criminal proceeding is heard and disposed of.

10. He denies the allegations contained therein.

11. He denies the allegations contained therein.

12. He denies the allegations contained therein.

For further answer to said Motion to Dismiss, your plaintiff alleges that no other remedy exists in this particular matter and makes reference to the decisions cited in plaintiffs' brief of People Ex Rel v. Coffey, and the case of Born v. Dillman, together with the transcript of testimony taken before the defendant, the Honorable John W. Conlin.

Plaintiff further states in reply to the entire motion that there is not one single case cited in the brief of the defendants which is directly because in no case cited has any defendant such as John W. Conlin, Theodore R. Bohn and the Honorable Thomas M. Kavanagh, attempted to bring a civil and criminal proceeding under the same charges and compel a person to go to trial on the civil charges, thereby involving the doctrine of self-incrimination and expressing their own defense to the criminal proceeding prior to going to trial on the criminal proceeding.

By Francis K. Young
FRANCIS K. YOUNG
Attorney for William W. Voisine
1657 Penobscot Building
Detroit 26, Michigan
WOodward 1-7293

Jan. 28, 1957.

APPENDIX "H"

Amended Order holding in Abeyance the Determination of Questions submitted until Determination of Criminal Trials, or until further Order of Court, and continuing in effect Temporary Restrain-Order.

(Filed and entered, Feb. 1, 1957)

The application for a temporary injunction and the motion to dismiss the complaint having come on to be heard, and

It appearing that the plaintiffs have been informed against and are now subject to criminal proceedings and removal proceedings arising out of a one-man grand jury inquiry, and

It appearing that the plaintiffs may forthwith be tried in the said criminal trials and that upon determination of the said criminal trials constitutional questions set out in the complaint may then become moot,

And it appearing that the plaintiffs may be prejudiced in the pending criminal proceedings by the investigation of the State in the removal proceedings, therefore,

This Court will hold in abeyance the determination of the questions submitted until the termination of the said criminal trials or until the further order of this Court, and pending such determination by this Court the restraining order heretofore issued shall remain in full force and effect.

Charles C. Simons
Chief Judge, United States Court of Appeals for the Sixth Circuit
Theodore Levin
United States District Judge
Eastern District of Michigan

Chief United States District Judge Lederle dissenting; thinks the case is ripe for disposition.

Detroit, Michigan
February 1, 1957

APPENDIX "I"

Defendants' Motion to dissolve Temporary Restraining Order or, in the Alternative, to pass on Defendants' Motion to Dismiss Complaint, filed in United States District Court in Cause of William W. Voisine et al. v. John W. Conlin, G. Mennen Williams, Governor, et al.

(Filed, Feb. 28, 1957)

MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER OR, IN THE ALTERNATIVE, TO PASS ON DEFENDANTS' MOTION TO DISMISS

Now come G. Mennen Williams, Governor of the State of Michigan, and Thomas M. Kavanagh, Attorney General, and move this Court to dissolve the temporary restraining order issued by the Court on the 14th day of January, 1957, and continued in effect on the 1st day of February, 1957, for the following grounds and reasons:

1. For the purpose of this motion, these defendants adopt all the grounds and reasons set forth in their motion heretofore filed in this cause on January 22, 1957, to dismiss the complaint.

2. This Court was without legal authority or jurisdiction to continue said restraining order after the completion of the hearing on complainants' application for a temporary injunction and on defendants' motion to dismiss.

3. This Court had no legal authority to refuse to decide defendants' motion to dismiss and enter its order of February 1, 1957, continuing the temporary restraining order, which, in effect, becomes a temporary injunction.

4. This Court's refusal to decide defendants' motion to dismiss this cause for lack of jurisdiction, and the issuance

of its order of February 1, 1957, amounts to an arrogation of power which this Court does not possess and which was not delegated to it by the Constitution of the United States nor any laws passed pursuant thereto.

5. The non-action on the part of this Court on defendants' motion to dismiss, coupled with its restraining order of February 1, 1957, results in an unconstitutional interference on the part of the Federal judiciary in the political affairs and responsibilities of the Governor of the State of Michigan; namely, the disciplinary authority of the Governor of this State over its municipal and local public officials.

6. That such interference with the duties and prerogatives of the Governor of this State is inimical to the public good and interest because the Governor is thereby prevented from determining, after hearing, whether said public officials should remain in office and be allowed to conduct the public affairs of a municipality.

Wherefore, G. Mennen Williams, Governor of the State of Michigan, and Thomas M. Kavanagh, Attorney General of the State of Michigan, pray this Honorable Court to dissolve the aforesaid temporary restraining order or, in the alternative, grant or pass upon defendants' motion to dismiss.

This motion is based upon the files and records in the cause and the affidavit of Joseph A. Sullivan, hereto attached.

THOMAS M. KAVANAGH
Attorney General
Joseph A. Sullivan
Deputy Attorney General
Nicholas V. Olds
Assistant Attorney General
Attorneys for Defendants

Dated at Lansing, Michigan
February 27, 1957

AFFIDAVIT

Joseph A. Sullivan, being duly sworn, deposes and says that he is the Deputy Attorney General for the State of Michigan and that since August 1, 1956, he has been assigned as an aide to the judicial investigation conducted by the Honorable Theodore R. Bohn, Circuit Judge for the Third Judicial Circuit of Michigan; that as a result of this investigation the Honorable Theodore R. Bohn, sitting as a one man grand juror, has issued warrants or indictments against a number of city officials, law enforcement officers, gamblers and other individuals, charging that there was probable cause to believe that these individuals had conspired to obstruct justice contrary to the laws of the State of Michigan; that among the defendants in this case are the present Mayor of the City of Ecorse, two of the present Councilmen of the City of Ecorse, four of the five members of the City of Ecorse Police Commission, a Police Inspector who was formerly Chief of Police, the Deputy Chief of Detectives and an Inspector of the Ecorse Police Department (a third member of the Council was charged in a separate warrant with bribery); that the said police officers presently occupy positions which, inter alia, carry with them the duty of investigating and suppressing gambling in the City of Ecorse; that all of the above-mentioned individuals and their positions in the City of Ecorse are more fully set out in the copy of the grand juror's warrant attached to the Complainants' complaint in the above entitled cause.

Deponent further says that on the day following the issuance of the grand juror's warrant against the above-mentioned police officers of the City of Ecorse, the present Chief of Police for the City of Ecorse, one Alvin Royal, suspended the three police officers pending the determination of their guilt or innocence on the charges made in the

warrant; that approximately ten days after the above-mentioned suspension (to-wit: October 11, 1956) the four remaining members of the Police Commission for the City of Ecorse (all of whom were themselves named as defendants in the same conspiracy in the warrant referred to) revoked and set aside the action of the Chief of Police and reinstated the three police officers in question; that the fifth member of the Police Commission, namely, William Montry, took no action in the reinstatement of the police officers since he had previously resigned as Commissioner and was named a co-conspirator and witness for the People in the above-mentioned conspiracy and was, at that time, in the protective custody of the Michigan State Police.

Deponent further says that following the issuance of the grand juror's warrant against the above-mentioned individuals, a preliminary examination was held before Justice of the Peace Douglas L. Paterson and subsequently all the above-referred to individuals were held for trial in the Circuit Court.

At the present time the three above-mentioned police officers are occupying the same positions held prior to the issuance of the warrant and are functioning in the same capacity, to-wit: positions which call for the investigation and suppression of gambling in the City of Ecorse.

Deponent further says that under the charter provisions of the City of Ecorse decisions of the Police Commission, the members of which are appointed by the Mayor with the consent of the Council, are final; that the only remedy available to the people of Ecorse for improper acts of the Police Commission is removal of said Commissioners by the Mayor and Council, but that the Mayor, who sits and votes as a Councilman, and three of the six Councilmen are themselves awaiting trial as a result of warrants issued by the grand jury and, with the exception of one Council-

man who faces a separate bribery charge, are all charged in the same warrant charging conspiracy to obstruct justice.

Deponent further says, on information and belief, that gambling operations are still being carried on in the jurisdiction of the above-mentioned Ecorse police officials; that the efforts of the grand juror and those assigned to assist him in his judicial investigation have been hampered by the continuation of the above-mentioned police officers in their role of law enforcement officers for that City.

Deponent further says, on information and belief, that the action of the indicted Police Commission revoking the suspension of the indicted officers and the failure to suspend or remove said Commission by the Mayor and Council (four out of seven being themselves indicted) has resulted in an intolerable situation with respect to law enforcement, viz., law enforcement officers and other witnesses who could give valuable information to the grand jury regarding graft in Ecorse are reluctant or afraid to do so because all of the indictees continue to hold offices with attendant powers and authority which could be used to defeat the ends of justice, and hence such prospective witnesses have good reason for fearing retaliation.

Dependent further states, on the basis of the aforegoing paragraphs, some of which are stated on information and belief, that the end result of those indicted continuing to hold office constitutes a perpetuation of the conspiracy to obstruct justice.

Deponent further says that attached hereto are pertinent provisions of the Charter of the City of Ecorse adopted by the electors of said City on January 27, 1942.

Joseph A. Sullivan

[Duly verified]

EXCERPTS FROM CHARTER OF CITY OF ECORSE

Chapter IV

Elective Officers, Salaries and Duties

Section 8. If a vacancy occurs in any elective office, the City Council shall within two weeks after the determination of such vacancy appoint an eligibie person to fill such vacancy until the next regular municipal election, when such office shall be filled by election.

Section 9. The Mayor shall be the Chief Executive Officer of the City. He shall preside at the meetings of the Council, shall be a member of the Council and have the right to vote on all questions and to offer resolutions, introduce ordinances and exercise all other rights, powers and privileges of a member of said Council but shall have no power of veto. He shall from time to time give the Council information concerning affairs of the City and see that the laws relating to the City and the ordinances and regulations of the Council are enforced.

He shall be a conservator of the peace and may exercise within the city the powers conferred upon sheriffs to suppress disorder and shall perform all such duties and have such powers as are or may be prescribed by this Charter, by ordinances, by resolutions of the City Council and by the laws of the State of Michigan. He shall authenticate by his signature such instruments as the City Council, this Charter or the laws of the State require.

Section 10. Each member of the City Council shall have such powers and perform such duties as are provided in Chapter V of this Charter.

Chapter V

City Council

Section 1. The Council of the City of Ecorse shall consist of seven (7) members, viz., the Mayor and six (6) Councilmen. Where the word "Council" is used herein it shall be deemed to include the Mayor.

Section 2. The City Council shall have full power and authority except as herein otherwise provided to exercise all the powers conferred upon the City, and it is authorized to pass all laws and ordinances relating to its municipal concerns and provide proper penalties for the violations thereof subject to the Constitution and general laws of the State and this Charter.

Section 3. The Mayor shall preside at the meetings of the Council. In the absence of the Mayor, the Mayor Pro Tempore shall preside. In the absence of the Mayor and the Mayor Pro Tempore, the Council shall designate one of its number to act as presiding officer.

Section 4. The Councilman receiving the highest number of votes at the preceding election shall be Mayor Pro Tempore during his term of office.

Section 5. The Council shall be the judge of the qualifications of its own members subject to review by the courts in cases of contest.

Section 6. A majority of the Council shall constitute a quorum for the transaction of business; but a less number may adjourn from time to time and all pending business

and business noticed and set down for hearing at such meeting shall be taken up and heard at such adjourned meeting without further notice; and the members present may compel the attendance of absent members in such manner as shall be prescribed by rules or ordinances.

Except as otherwise provided in this Charter, the affirmative vote of a majority of the members of the Council shall be necessary to adopt an ordinance or resolution, but no office shall be created or abolished, nor any tax or assessment be imposed, nor any street, alley, or public ground be vacated, real estate or any interest therein purchased, leased, sold or disposed of, or private property be taken for public use, unless by a concurring vote of five-sevenths (5/7) of the Council elect, nor shall any vote of the Council be reconsidered or rescinded at a special meeting unless there be present as many councilmen as were present when the vote was taken.

Section 8. Any member of the Council who shall have been convicted of a felony while in office shall thereby forfeit his office.

Chapter VI

Department of Public Safety

Section 19. There is hereby created in the Department of Public Safety a police and fire commission which shall consist of five (5) members. One member of such commission shall be appointed each year by the Mayor on the 3rd Tuesday in November, subject to confirmation by the Council and shall hold office for a term of five (5) years; provided, however, that the first commission shall be appointed within thirty (30) days after the adoption of the Charter, and the members thereof shall be appointed for

terms ending on the 3rd Tuesday in November, 1942, 1943, 1944, 1945 and 1946 respectively. All members shall hold offices until their successors are appointed, qualified and enter upon the duties of their office. Membership on such commission shall be honorary and the members thereof shall serve without compensation.

Section 20. The Police and Fire Commission shall have general control and management of the Police Department and Fire Department. Said Commission shall at its first regular meeting after the adoption of this Charter and at its first regular meeting after the 3rd Tuesday in November each year, elect a chairman, a vice-chairman and a secretary from among its number. It shall meet regularly each month and at such other times as it deems necessary. All regular meetings shall be held in the Municipal Building. It shall adopt rules for its own procedure and provide for the keeping of a complete record thereof.

Section 21. The Police and Fire Commission shall when a vacancy exists appoint a Chief of Police and a Chief of Fire Department, both of whom shall be directly responsible to the Commission, and the executive head of the Police Department shall be the Chief of Police and the executive head of the Fire Department shall be the Chief of Fire Department. In addition to the respective chiefs, there shall be in the Police Department and in the Fire Department, such number of policemen and firemen, respectively, as the Council shall from time to time authorize or deem necessary to protect said City from lawlessness or ravages of fire. The Council may also authorize the employment of civilian employees who, however, shall not be considered as members of the Police force or Fire force as those terms are used in this Charter. All persons appointed to either the Police force or Fire force, except those appointed to office of Chief, shall be first appointed as probationary members

thereof. All members of the Police and Fire forces shall be residents of the City of Ecorse.

Section 23. The Commission shall adopt rules and regulations for organization and conduct of the Police and Fire Departments, for the rank of the members of the Police and Fire forces, and for punishment for breaches of discipline or violations of rules and regulations. The Commission may discipline, suspend temporarily and discharge permanently, any member of the Police or Fire Department for any cause which the Commission in the exercise of their discretion deem sufficient, provided, however, that neither the Chief of the Police Department nor the Chief of the Fire Department, nor any member of the police or fire forces except a probationary member shall be dismissed unless a formal complaint of the cause or causes of his suspension or removal be served upon him, and after trial and conviction by the Commission sitting as a trial board. The decision of the Commission shall be final. Such rules shall provide for the manner of making such complaint and for the procedure upon such a trial.

Section 27. The Chief of Police and the Chief of Fire Department shall have all the powers and duties conferred by the laws of this State upon such officers. In addition to such duties as are required of them by the laws of this State and the provisions of this Charter, they shall perform such other duties as may be prescribed by ordinance or by the Commission. They shall each make such reports as are required by law or by resolution of the Commission or Council.

Members of the police force shall have power and it shall be their duty to enforce the penal laws of the State, the penal ordinances of the city and the penal provisions of this Charter; to suppress all riots, disturbances and

breaches of the peace; to arrest all persons fleeing from justice; in compliance with the laws of the State, to apprehend persons guilty or suspected of being guilty of violation of the laws of the State, the ordinances of the City, or the provisions of this Charter; to make complaints before the proper officer or magistrate against any person known or believed by them to be guilty of any violation of the laws of the State, the ordinances of the City or the provisions of this Charter; to serve all processes that may be delivered to them in criminal and ordinance cases. When any person has committed or is suspected of having committed any crime, or misdemeanor within the city or has escaped from the city prison or from custody of the police, the police force of the city shall have the same right to pursue, arrest and detain such person without the city limits as the sheriff of the county, and the police shall have the same powers and rights in relation to offenses against the ordinances of the City and the provisions of this Charter. They shall have all the powers given by law to constables for the preservation of quiet and good order and in relation to the enforcement of the laws of the State and ordinances of the City, and in addition thereto, shall have such other powers as are conferred generally upon peace officers of the State. They shall perform such other duties as may be required of them by the Police and Fire Commission for the good government of the City.

Chapter III

Registration, Nomination and Election

Section 9. The Chief of Police shall have charge of, supervise and be responsible for the delivery of all ballot boxes, supplies, stationery, ballots and accessories, to the election inspectors and election boards at each place of voting at least fifteen minutes before the time of opening

of the polls. He shall also take charge of said ballot boxes immediately after the election upon their being sealed by the Board of Election Inspectors, and at once deliver them to the City Clerk at his office. He shall properly guard said boxes and secure them from tampering or disturbance from the time they may be delivered to him by the clerk until they are returned to the office of the clerk after sealing.

Chapter VII

General Provisions Relating to Officers

Section 16. A majority of the Councilmen elect, exclusive of the Mayor, may suspend any appointive officer of the City by resolution, adopted at any regular meeting, specifically charging neglect of duty, misconduct in office, or other sufficient cause or causes as a basis for removal.

The salary of such suspended officer shall be immediately terminated, but shall be reinstated if removal charges are not preferred or sustained as herein provided.

No suspension shall result in removal unless a copy of the suspension resolution, and a statement of the offense or offenses and time and place thereof, shall be served personally on such officer, or left with a person of suitable age and discretion at the last known place of residence of such suspended officer, within seventy-two (72) hours after suspension.

The said officer shall have the privilege of filing an answer to said charges within five (5) days after service upon him of a copy thereof. The Council shall hear such complaint and charges, and defense if any, at its next regular meeting.

Should no charges be served within the time provided or be not sustained at the hearing thereof, said officer may resume the duties of his office as if no suspension had been made. A majority of the Council elect, exclusive of the Mayor, may determine at such hearing that the charges have been sustained and may remove such officer.

APPENDIX "J"

Answer of William W. Voisine to Motion to dissolve Temporary Restraining Order or, in the Alternative, to pass on Defendants' Motion to Dismiss Complaint. Supporting Affidavits thereto attached.

(Filed, March 11, 1957)

ANSWER OF WILLIAM W. VOISINE TO MOTION TO DISSOLVE TEMPORARY ORDER OR IN THE ALTERNATIVE TO PASS ON DEFENDANTS' MOTION TO DISMISS.

Now comes Francis K. Young, attorney for William W. Voisine, one of the above named complainants, and for answer to defendants' motion to dissolve temporary restraining order states:

I. In answer to the allegations contained in paragraph I. of said motion, this complainant alleges that said matters were disposed of in the Court's order of February 1, 1957.

II. In answer to the allegations in paragraph II. of defendants' motion to dismiss, this complainant states that this Three-Judge Court does have legal authority and jurisdiction to do what it did in the premises in that said Court in its opinion stated that due process of law would not be complied with if the complainants in this proceeding, who are the defendants in another proceeding, would be compelled to go to trial in the civil proceeding before they had had an opportunity to meet the allegations against them in the criminal proceeding. Complainant further states in reply to paragraph II, that a Three-Judge Court of the

United States has been granted authority and does have authority and jurisdiction to prevent irreparable damage and injury when there comes before said Three-Judge Court a sufficiently "unique" situation requiring the Court to exercise its jurisdiction.

III. In answer to paragraph III. of defendants' motion to dismiss, the complainant William W. Voisine alleges that this Three-Judge Court does have jurisdiction to prevent irreparable damage and injury, and for further answer thereto this complainant alleges that it is apparent that all the representatives of the People of the State of Michigan desire to do in this particular proceeding is to remove these complainants from office at all costs prior to the time that they meet trial on the criminal information which has been filed against them.

IV. In answer to the allegations in paragraph IV. of defendants' motion to dismiss, this complainant states that in each and every legal decision existing in the 48 states and in the Supreme Court of the United States, and in the statute providing for jurisdiction of a Three-Judge Court, and in the statute providing for injunction, that there has always been left a crack in the door wherein a complainant in a unique and unusual situation could enter and protect his constitutional rights. Complainant charges that in this particular hearing this Court has recognized the situation and issued a fair and proper order and said complainant denies that this Three-Judge Court has been guilty of any "arrogation of power". Complainant states that in these United States the only protection against a situation such as is before this Three-Judge Court is by this Three-Judge Court.

V. The complainant denies each and all of the allegations contained in Paragraph V. of said defendants' motion

to dismiss and for specific answer thereto expressly states that there exists within the citizens of the City of Ecorse power to protect themselves in the event they are not properly satisfied with the conditions of their own government by virtue of the provisions of Chapter 10 of the Charter of the City of Ecorse, namely, Section 7, which is quoted as follows:

> "Any elective officer may be removed by the qualified electors of the city, at the time and in the manner provided by the general laws of the State."

Complainant further charges that political rights are inherent in the people and not in the defendants in this action. The people of the City of Ecorse may vote, may start a petition to recall and it is significant that they have not done so, but that the only pressure brought against the city officials of the City of Ecorse is by certain representatives of the defendants herein named.

VI. In answer to the allegations contained in paragraph VI. of said motion, complainant for reasons hereinbefore set forth and hereinafter set forth denies the same.

In further answer to defendants' motion to dismiss, complainant William W. Voisine desires to call specifically to the attention of this Honorable Three-Judge Court the following items:

(a) That this is a motion to dismiss by two defendants only and not by all four defendants.

(b) That no changed condition or circumstance is set forth or alleged to have occurred between the Court's order of February 1, 1957, and the date of filing of said motion.

(c) That said complainants have not employed dilatory tactics in the Wayne County Circuit Court in the criminal proceeding therein pending against them.

(d) That the defendants on the other hand have done nothing whatever to speed up and to comply with the constitutional provisions to render to said complainants a speedy trial by jury.

(e) That the defendants herein in their motion to dismiss take a legal position contrary to the Declaration of Independence, the Common Law, the Constitution of the United States, the decisions of this Court and the decisions of the Michigan Supreme Court, because they desire to completely and utterly destroy a person's reputation during a period when that person is entitled to be cloaked with the presumption of innocence, which type of grand jury action was so recently criticized in the Florida Supreme Court in a case involving Circuit Judge George E. Holt of Dade County, Florida, decided on either February 27th or 28th (the exact date and citation of this ruling are at the moment not available to your complainant, except that the title of said case is State of Florida et al, George A. Brantigan, States Attorney vs. Interim Report of Grand Jury of Dade County).

(f) Complainant states that no evidence is included in said motion to dismiss, other than by an information and belief affidavit, that law enforcement has broken down in the City of Ecorse or that there exists any imminent peril that same will break down.

WHEREFORE your complainant William W. Voisine prays that the motion to dissolve temporary restraining order filed in behalf of two of the four defendants in the above entitled cause be dismissed and denied, and that this

Court's order of February 1, 1957, be continued for the following reasons:

1. That the Honorable Frank FitzGerald, Presiding Circuit Judge of Wayne County, is at present holding hearings on the motions to quash in the criminal indictment.

2. That said case has not been set for trial although nothing has been done on the part of the complainants herein to prevent said case from being set for trial.

3. That defendants have made no showing in their motion to dismiss that dilatory tactics have been employed by the complainants herein or that they have attempted to have the case set for trial and have failed.

4. That this motion is based upon a series of affidavits annexed hereto, together with Appendix "A" and Appendix "B" and by reference this complainant adopts portions of the answers of other complainants being filed with this Court which likewise bear upon this question which are not repeated in this answer for the sake of brevity.

And your complainant will ever pray.

Respectfully submitted,
By FRANCIS K. YOUNG
Attorney for William W. Voisine
1657 Penobscot Building
Detroit 26, Michigan
WOodward 1-7293

Dated: March 5, 1947.

AFFIDAVIT OF WILLIAM W. VOISINE

STATE OF MICHIGAN }
COUNTY OF WAYNE } ss.

William W. Voisine being first duly sworn deposes and says that he is one of the com- lainants in the above entitled cause and acknowledges that he has read the affidavit of Joseph A. Sullivan annexed to defendants' motion to dissolve temporary restraining order.

Deponent further says that if said Joseph A. Sullivan on information and belief has any information that gambling operations are still being carried on in the jurisdiction of Ecorse, that he should furnish said information to Chief Alvin Royal of the Ecorse Police Department, and said Chief of Police will forthwith take action thereon in the event the matter is not already under investigation.

Deponent further says that as Mayor of the City of Ecorse he has no power or authority to remove any executive from office in the City of Ecorse, nor does he have the right to suspend any such officer. Deponent states that in the City of Ecorse under the Charter of the City of Ecorse, a man is "presumed to be innocent until proven guilty", and that charges must be filed against a person sought to be removed from office and said charges properly proven by evidence.

Deponent further states that no charges have been filed against any officer of the City of Ecorse in accordance with the Charter and that newspaper accounts of what may or may not exist in the City of Ecorse do not constitute evidence and therefore cannot be used.

Deponent further states that when he defends his ouster and/or removal proceeding that it will be necessary for

him to call as witnesses certain people which are either under subpoena by the grand jury or have been indicted by the grand jury in order to refute the statements of a person who has confessed to the taking of graft, and who has confessed to lying on the witness stand, and that he cannot properly prepare his defense nor meet the charges against him if any of these witnesses feel that they may be involved in possible self-incrimination by taking the witness stand in advance of any criminal proceeding.

Deponent further says that he was subpoenaed back before the grand jury after he was indicted and compelled to testify, although he objected thereto and that he has been informed that other co-indictees were in the same situation as a result of which none of these persons desire to take the stand in the civil proceeding until and when they can fully and completely meet the issue in the criminal proceeding, because your deponent has been advised by his attorney that the representatives of the State of Michigan have stated on many occasions that they have not presented their full case against your complainant, nor have they endorsed all of the witnesses on the information that they intend to use against said complainant. Deponent further says that the representatives of the State of Michigan handling the case for the defendants named herein have sought always to try him in the newspapers and in a proceeding which they can control, and not before a court of proper jurisdiction where he may be protected by his Federal and Michigan constitutional rights, all of which is in complete violation and similar to the Florida Supreme Court decision referred to in other portions of this answer.

Further deponent saith not.

By William W. Voisine
William W. Voisine

[Duly verified]

AFFIDAVIT OF FRANCIS K. YOUNG

STATE OF MICHIGAN)
COUNTY OF WAYNE) ss.

FRANCIS K. YOUNG being first duly sworn deposes and says that he is attorney for William W. Voisine, Mayor of Ecorse, one of the complainants in the above entitled cause, and that this affidavit is made in opposition to a motion to dissolve temporary restraining order or in the alternative to pass on defendants' motion to dismiss filed by two of the four defendants in the above entitled cause.

Deponent states that each and all of the items contained in the defendants' present motion were before this Honorable Court at the argument on January 29, 1957, with the possible exception that the affidavit of the Deputy Attorney General which does not conform to law does include some new argumentative matters not raised during the argument before this Court, but which could have been raised before this Court on the 29th day of January.

Deponent further says that subsequent to January 29, this Court issued an order which was subsequently amended by the Court on February 1, 1957, which amended order is contained in the files and records of this Court.

Deponent further states that a defendant in the criminal proceeding, in order to protect his rights at the trial of a cause or his rights of review before the Supreme Court of Michigan, must raise certain points by a motion to quash and your deponent alleges that all defendants involved in the Montry conspiracy did file motions to quash.

Deponent further states that Judge Frank FitzGerald, Presiding Judge of the Wayne County Circuit Court, was

scheduled to commence hearing these motions on February 6th and 7th of 1957, but that on February 4th, without any request being made in connection therewith by your deponent as attorney for William W. Voisine, Judge Frank FitzGerald mailed to your deponent a letter, a photostatic copy of which is attached hereto, made a part hereof and referred to as Appendix "A".

Deponent further says that thereafter on February 7, 1957, a second notification of adjournment was mailed to your deponent by the Honorable Frank FitzGerald, Wayne County Circuit Judge, adjourning the hearing on said motions to quash to February 20th and 21st of 1957, and that a photostatic copy of this letter is appended to this affidavit and designated Appendix "B".

Deponent further states that on February 20th and 21st, one of the Complainants herein, namely, Francis Labadie, by and through his attorney Jerome P. Cavanagh, argued his motion before the Honorable Frank FitzGerald.

Deponent further states that the remaining time of said Court was consumed by the Attorney General for the State of Michigan and by Charles W. Jones, who represents certain defendants in said cause and at the conclusion of said hearing a continuance for argument on the remainder of the motions was ordered by the Court until Monday, February 25th.

Deponent further states that in this particular criminal proceeding he not only represents William W. Voisine but that he also represents two other defendants, namely, Rudy Hickey and Robert Neal, and that he has filed motions to quash in behalf of each and all of these three defendants, and likewise has prepared and filed briefs pertaining to the law covering the said motions.

Deponent further says that on Monday, February 25th, he received a call from Mr. Charles Farmer, Assistant Attorney General, advising that Judge Frank FitzGerald would not hear any additional motions until Thursday, February 28th, 1957, at 2:00 o'clock P.M.

Deponent further says that on February 28th at 2:00 o'clock P.M., Mr. Joseph Freed, representing Elmer Korn, one of the complainants herein, argued his motion to quash but that the State has not as yet replied to said argument and that the State is scheduled to make its arguing reply on Tuesday, March 5, 1957.

Deponent further states that Michael A. Guest, attorney for Albert Buday and Nick Stroia, made and completed his argument on Thursday, February 28th.

Deponent further states that at the time of the dictation of this affidavit that the schedule for March 5, 1957, is that the argument of the motion to quash for and in behalf of Elmer Korn, complainant herein, will be completed and that thereafter Vincent Fordell, a former United States District Attorney, who represents two defendants in the criminal proceeding, namely, John Bader and Walter Chase, is scheduled to argue after which Mr. Lawrence Burns, who represents Paul Sackenheim and Joe Kavalchik, is scheduled to argue.

Deponent further says that shortly thereafter at such time as the Court may designate he will argue the motions to quash in behalf of William W. Voisine, defendant in the criminal proceeding and complainant herein, together with the motions to quash of Rudy Hickey and Robert Neal.

Deponent further says that these motions to quash cannot in any manner whatsoever be considered as a dilatory

tactic, or a delaying action, because there was nothing to have prevented the representatives of the Attorney General's Department from requesting that the cases be set down for trial on a particular date at which time they would be referred to a judge for trial who could give due and proper consideration to the motions to quash prior to the impanelling of a jury.

Deponent further states, in his opinion from listening to arguments already made and from knowing the arguments yet to come, that there is more than an even possibility that all or some of the defendants in the criminal proceeding may be discharged or that the case may be referred back to the examining magistrate for a further examination, because one of the Assistant Attorney Generals stated in open court that the State had not presented its entire case against the defendants at the preliminary examination as a result of which the Honorable Frank FitzGerald, Circuit Judge, stated that he could only consider the evidence before him and that if the State of Michigan did not intend to rely upon the record before it that the State should immediately make a move for a further examination.

Deponent further states that actually if there has been any delay in the trial of the criminal proceeding that it is due solely to the representatives of the defendants herein, because at the preliminary examination in Grosse Pointe one particular defendant by the name of Amos Botts was discharged because the Justice of the Peace determined that there was not sufficient evidence or "probable cause" to bind over the defendant Amos Botts for trial in the alleged Montry conspiracy.

Deponent further says that approximately sixty days after Amos Botts was dicharged as a defendant in the alleged conspiracy by the Justice of the Peace in Grosse

Pointe, that the State of Michigan through the representatives of the defendants herein, then filed a petition for a writ of mandamus against Douglas Leo Paterson, Justice of the Peace of Grosse Pointe, alleging and claiming that he abused his discretion in releasing this particular alleged co-conspirator from the indictment.

Deponent further says that this matter has not been heard and should the Honorable Frank FitzGerald before whom this writ of mandamus is to be heard determine that Amos Botts should have been bound over, we then find ourselves in a situation where Amos Botts must be re-arrested, given an opportunity to make bail, be arraigned on the information, and he is likewise entitled to have the right to file a motion to quash. The alleged co-conspirator, Amos Botts, should the Circuit Court bind him over for trial, reversing the examining magistrate's ruling, might of course decide that he would appeal to the Supreme Court thereby tying up the criminal proceeding.

Deponent further states that none of these side issues and/or proceedings can be charged to the complainants herein because they are acts, deeds, moves and proceedings taken by the representatives of the defendants herein.

Deponent specifically charges that it is solely the motive of the representatives of the People of the State of Michigan to in some way force the complainant herein to be removed from office regardless of what may eventually happen in the criminal trial which could have been noticed prior to the time that this motion for a dissolution of the temporary injunction will be argued before this Court.

Deponent further states that he has examined with great care Rule 52 and this Court's order of February 1, 1957,

and that in his opinion it complies in all respects with Rule 52.

Deponent further states that the defendants in their motion to dissolve the temporary restraining order have not raised any new questions or shown any change in conditions that would enable them at this time to obtain a dissolution of the temporary restraining order.

Deponent further states that the affidavit of Joseph A. Sullivan attached to said motion is based entirely upon conclusions and is totally unwarranted, and is without foundation either in law and/or in fact.

Deponent further states that he has examined the charter provisions attached to the said motion and admits that they are part of the Charter of the City of Ecorse, however your deponent desires to call the attention of this Court to the fact that had the representatives of the State of Michigan proceeded properly in respect to removing police officers, they should have filed charges before the Police and Fire Commission of the City of Ecorse and then if the Police and Fire Commission failed to act they could have filed charges for removal by the Common Council of the City of Ecorse, and then if the Common Council failed to act, there might be some complaint that the officials of the City of Ecorse are not performing their duties.

Deponent further says that attached to the answer of Francis Labadie are certain resolutions adopted by the Council and Police and Fire Commission of the City of Ecorse to the effect that law enforcement in the City of Ecorse is entirely in the hands of Alvin Royal, Chief of Police of the City of Ecorse, who is a known political opponent of the complainants herein, and if law enforcement has broken down in said city it is directly within the re-

sponsibility of the Chief of Police because of the fact that the complainants herein have in no manner whatsoever interfered with the administration of the criminal statutes of the City of Ecorse or the State of Michigan.

Deponent further says upon information and belief that the police officers who have been indicted and who are included in the information, which is Appendix "C" attached to complainants' bill of complaint, are not parties to this cause, but by name are Alvin Gillman, who has been a member of the Police Force of the City of Ecorse for a period of twenty years; Roscoe Bobo, who has been a member of the Police Force of the City of Ecorse for approximately thirteen years and Roosevelt Lackey, who has been a member of the Police Force of the City of Ecorse for a period of seventeen years.

Deponent further says upon information and belief that these three police officers are totally free of criminal record and in their communities enjoy a good reputation, and since the indictment was issued they have been functioning with the police Department of the City of Ecorse in clerical duties under the instructions of Chief Alvin Royal to an extent where they cannot be said to be in charge of the administration of law enforcement in the City of Ecorse.

Deponent further says that the charter of Ecorse, the same as the statutes of the State of Michigan and the law of the United States, even though contrary to the statements of the representatives of the defendants herein, all indicate that when a person is accused of a crime that he is presumed to be innocent until proven guilty. Deponent further states that said person is entitled to have charges filed against him and that up to and including this date in the City of Ecorse, there have been no charges filed with any removing authority with the power to remove under

the Charter of the City of Ecorse against any lesser member of the Government of the City of Ecorse.

Deponent further says that as a result of this situation that the affidavit of Joseph A. Sullivan, Deputy Attorney General, and his quotation of the Ecorse Charter attached thereto, are totally irrelevant, immaterial and are based upon false and incorrect conclusions.

Deponent further says that a reading of this affidavit again emphasizes a desire of the representatives of the defendants herein to remove the complainants from office at any cost, regardless of whether or not they are convicted subsequently in any criminal proceeding.

Deponent further says that at the preliminary examination the only substantial witness presented by the People of the State of Michigan was William Montry, and that substantially all of his testimony was hearsay testimony brought in on the basis that he was an accomplice or co-conspirator.

Deponent further says that the transcript of testimony indicates that William Montry has given false testimony at the preliminary examination which conflicts with testimony that he gave at another proceeding before Judge Joseph A. Moyniham. Deponent further says that at the preliminary examination William Montry admitted that he had taken certain graft, but had not reported the same on the income tax return, and each member of this Court is familiar with the fact that when a person signs his income tax return that he does so under the penalties of perjury.

Deponent further says that in his opinion we therefore come down to a situation which is similar and like the case

of *Mesarosh vs. United States, 100 Law Ed. 807,* wherein the Supreme Court of the United States granted a writ of certiorari.

Deponent further states that in Vol. 1, Law Ed. 2d, No. 1, Advance Sheet of November 19, 1956, at page 1, this opinion is reported and if this decision is read by the members of this Honorable Three Judge Court, it will be seen that not only the Court but the lawyers are always in a quandary when we are forced with a situation where the main prosecuting witness is known to be at least in part a false witness. Finally in the last paragraph of this opinion, Mr. Chief Justice Warren, who delivered the opinion of the Court, stated:

> "The government of a strong and free nation does not need convictions based upon such testimony. It cannot afford to abide with them. The interests of justice call for a reversal of the judgments below with direction to grant the petitioners a new trial."

Deponent further says that he calls this case to the attention of this Honorable Court principally for the reason that nothing has happened against the complainants herein in the criminal case pending before them in the Wayne County Circuit Court other than to have had the testimony of William Montry presented against them. Deponent further says in his opinion that this is weak, unreliable and that in all fairness the complainants herein, which are the defendants in the State criminal proceeding, are entitled to a fair and impartial hearing in the Circuit Court for the County of Wayne without being faced with a great amount of publicity and stigma that would be attached to an ouster and/or removal proceeding prior to the criminal case.

Deponent further says that on February 27, 1957, in the Supreme Court of the State of Florida, there was an opinion filed pertaining to the Dade Grand Jury Report Case, wherein the Florida Supreme Court stated:

"The person so condemned is just as defenseless as the medieval prisoner and the victim of the lynch mob; the injury to him is just as fatal as if he had been charged with and convicted of a crime. As stated in People v. McCabe, 266 N. Y. S. 363, 367, a case frequently cited in denouncing grand jury reports such as that with which we are here concerned: 'A presentment (report) is a foul blow. It lends the importance of a judicial document; yet it lacks its principal attributes—the right to answer and to appeal.

'It accuses but furnishes no form for denial. No one knows upon what evidence the findings are based. An indictment may be challenged—even defeated. The presentment is immune. It is like the "hit and run" motorist.

'Before application can be made to suppress it, it is the subject of public gossip. The damage is done. The injury it may unjustly inflict may never be healed.'

The wisdom of the foregoing rule is demonstrated by the grand jury report in the John W. Wright case, decided this date. Wright was castigated, humiliated and embarrassed by a presentment just short of indictment, although th record and holding of the trial court showed him guilty of no wrong-doing.

On the contrary, the Grand Jury presentment itself in one instance recognized the important service that Mr. Wright had rendered in presenting the entry of

a substantial judgment against the estate of Mrs. Dowling.

For the future guidance of the grand juries of this state, we repeat the admonition of In re Report of Grand Jury, supra, 11 state SO.2d 316, 318, that a grand jury 'will not be permitted to single out persons in civil or official positions to impugn their motives, or by word, imputation, or innuendo hold them up to scorn or criticism . . .

'Neither will they be permitted to speak of the general qualifications or moral fitness of one to hold an office or position. . . .'

Our holding in this respect is in line with the great weight of authority in this country that 'it is improper for a grand jury to present with words of censure and reprobation a public official or other person by name without presenting him for indictment, and the accused has the right to apply to the courts to have the objectionable matter expunged from the court record.'' Ex parte Faulkner et al., 251 S.W.2d 822 (Ark.1952), and cases cited.''

Deponent further says that we are presently engaged in hearings before the Honorable Frank FitzGerald, that he made an announcement at the outset of the arguments that he would hear all arguments, then give them study, due consideration and announce his findings. Deponent states that he does not know what the Honorable Frank FitzGerald of the Wayne Circuit Court will do pertaining to these items nor how quickly he will decide the same, but your deponent further states that we are in the same position before this Court as when your deponent argued on January 29, that it was possible for us to be removed from

office and yet be completely and thoroughly condemned by the newspapers and removed from office without any appropriate remedy.

Deponent further states that in the reading of all of the opinions of the courts of last resort from each of these United States and of the Supreme Court of the United States, that the door has always been left open for plaintiffs to stop a proceeding such as this Court has stopped in this instance where irreparable damage and injury can be done.

Further deponent saith not.

By Francis K. Young
Francis K. Young

[Duly verified]

AFFIDAVIT OF LAWRENCE A. BURNS

STATE OF MICHIGAN }
COUNTY OF WAYNE } ss.

Lawrence A. Burns being first duly sworn, deposes and says that he is an attorney-at-law practicing in the City of Detroit, County of Wayne and State of Michigan and that he is a member of the State Bar of Michigan and likewise is admitted to practice in the United States District Court.

Deponent further says that in one certain criminal case which is entitled People versus Voisine, et al, now pending in the Circuit Court for the County of Wayne, under No. 34,092, that he is the attorney for two alleged co-conspirators namely Paul Sackenheim and Joe Kovalchik.

Deponent further says that he has filed motions to quash certain information filed against these two defendants, which is scheduled for hearing on or about March 5, 1957 pertaining to said defendants and that he is familiar with all of the facts and circumstances pertaining to their connection with the so-called "Montry Conspiracy."

Deponent further says that while the preliminary examination was being conducted before a Justice of the Peace in the City of Grosse Pointe that he was advised by Francis K. Young, attorney for Willam W. Voisine that on page 8 of a document referred to as an Ouster or Removal Proceeding against William W. Voisine, Albert Buday, Francis Labadie and Elmer Korn which he has further been informed is attached to the plaintiff's Bill of Complaint and designated Appendix "B", that his clients are charged with having conspired with certain persons to be involved in illegal enterprises which comes within the

action to obstruct justice according to the claim of the representatives of the people of the State of Michigan.

Deponent further says that as long as he is attorney of record for the defendants Paul Sackenheim and Joe Kovalchik that he cannot honestly or fairly permit them to take the witness stand even to aid or assist William W. Voisine in the Ouster and/or Removal Proceeding to attempt to rebut or refute any conspiracy testimony given by William Montry while the criminal charge is pending against them, and that as a result of the peculiar situation he has advised Francis K. Young that in the event the Ouster and/or Removal Proceeding goes to a hearing that even if those two clients were called as witnesses by the people of the State of Michigan or by the defense, that it would be necessary for him to appear at the hearing with them and advise them to not testify on any matters that might possibly tend to incriminate them, both under the laws of the State of Michigan and under the Fifth Amendment to the Constitution of the United States in the conspiracy proceeding which is now pending in the said court and which to this date the Circuit Court for the County of Wayne has not set for trial because of the fact that the Honorable Frank FitzGerald presiding Circuit Judge, has not concluded that there was sufficient testimony presented at the preliminary examination to determine whether or not a crime was committed in the City of Ecorse and if so whether or not there is probable cause that these two particular clients should face trial in connection therewith.

Deponent further says that until the criminal proceeding trial involving the "Montry Conspiracy" actually commences and the people of the State of Michigan present their evidence that he will advise these witnesses not to take the witness stand because it might tend to violate their constitutional rights.

Deponent further says that in the criminal action on file in the Circuit Court for the County of Wayne in Cause No. 34,092, which is attached to plaintiff's Bill of Complaint in this cause and designated as Appendix "C", that there is endorsed thereon certain witnesses, namely William Page and Dave Edwards, whom your deponent represents in the proceedings before the one-man grand juror, Theodore E. Bohn, one of the defendants herein and that he likewise could not permit these witnesses as long as he is their attorney to appear before the defendant the Honorable John W. Conlin and give testimony that might be incriminating to themselves even though such testimony might be of value to William W. Voisine.

Further deponent saith not.

Lawrence A. Burns

[Duly Verified]

AFFIDAVIT OF CHARLES W. JONES

STATE OF MICHIGAN
COUNTY OF WAYNE } SS

Charles W. Jones being first duly sworn, deposes and says that he is an attorney-at-law practicing in the City of Detroit, County of Wayne and State of Michigan and further states that if called to the witness stand to testify that he can confidently testify to the matters set forth in this affidavit.

Deponent further says that in a certain criminal case which is the so-called "Montry Conspiracy" titled "People of the State of Michigan versus William W. Voisine, et al", Wayne Circuit Court No. 34,092, he is attorney of record for the following persons:

William Jones
Patrick Slitti
Irvin Steffes
Greelie Dukes
Harry Monks
Alvin Gillman
Roscoe Bobo
Roosevelt Lackey
J. C. Wall

Deponent further says that he has read and is entirely familiar with the Ouster and/or Removal Proceeding which has been filed and is presently pending before the defendant the Honorable John W. Conlin against William W. Voisine, Albert Buday, Francis Labadie and Elmer Korn.

Deponent further says that in accordance with the laws of the State of Michigan in order to protect the record in

behalf of his client that it was necessary for him to file motions to quash the action on file in the criminal proceeding, otherwise certain rights of his clients would be waived at the trial and on a subsequent appeal, if necessary.

Deponent further says that he argued before the Honorable Frank FitzGerald on February 20 and February 21 the motions to quash of William Jones and Patrick Slitti and that during the same session there was argument by Jerome Cavanagh, the attorney for Francis Labadie the motion to quash for and in behalf of Francis Labadie and that these motions have been taken under advisement by the Honorable Frank FitzGerald, presiding Circuit Judge for the Wayne Circuit Court in criminal matter.

Deponent further says that the only testimony of importance presented at the preliminary examination against his clients was hear-say testimony by an alleged co-conspirator named William Montry and that a representative of the Attorney General's office of the State of Michigan made a statement in open court to the effect that the People of the State of Michigan had not put in all of their case against the particular defendants so named.

Deponent further says and ventures the opinion that all or at least some of the defendants named in the criminal case will be discharged when the Honorable Frank FitzGerald makes his decision based upon said matters.

Deponent further says that Francis K. Young talked to him in reference to the necessity of presenting his clients as possible witnesses to rebut the testimony of William Montry in the ouster and/or removal proceeding when and if the same would be heard.

Deponent further says that he advised Francis K. Young that as long as he represents the above parties that he

could not permit them to take the witness stand until such time as it could be determined fully and completely what the State had proved against them because of the fact that through one or more of his clients the cross-examination in the ouster and/or removal proceeding might cause his clients to be compelled to answer questions which would tend to incriminate them under the laws of the State of Michigan and/or the United States in violation of both the laws of the State of Michigan and the Fifth Amendment to the Constitution of the United States, because it might tend to incriminate some of his clients, although it might be of great benefit and assistance to William W. Voisine.

Further deponent saith not.

Charles W. Jones

[Duly verified]

APPENDIX "K"

Order of Three-Judge District Court denying Motion to dissolve Temporary Restraining Order or, in the Alternative, to pass on Defendants' Motion to Dismiss.

(Filed and entered, April 9, 1957)

The paper filed by the defendants entitled, Motion to Dissolve Temporary Restraining Order or, in the Alternative, to Pass on Defendants' Motion to Dismiss is deemed a Motion for Rehearing, and

It appearing that there is nothing presented to the Court on the hearing of the said motion, or in the papers filed in support thereof, which was substantially different from that considered at the time the order of January 30, 1957 or the amended order of February 1, 1957 was entered, therefore,

IT IS ORDERED that the said motion be, and the same is hereby denied.

CHARLES C. SIMONS
Charles C. Simons
Chief Judge, United States Court of Appeals for the Sixth Circuit

Theodore Levin
United States District Judge
Eastern District of Michigan

Chief United States District Judge Lederle dissenting;

agrees that there is no reason for granting a rehearing but repeats that he thinks the case is ripe for disposition.

Detroit, Michigan
April 4, 1957.

A TRUE COPY

By E. James Chaffee

Deputy Clerk

SUPREME COURT, U.S.

FILED

SEP 23 1957

JOHN T. FEY, Clerk

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1957 — No. 74 Misc.

G. MENNEN WILLIAMS, Governor of the State of Michigan,

- and -

THOMAS M. KAVANAGH, Attorney General of the State of Michigan,

Petitioners,

v.

HONORABLE CHARLES C. SIMONS, Chief Judge, United States Court of Appeals for the Sixth Circuit,

HONORABLE ARTHUR F. LEDERLE, Chief Judge,

- and -

HONORABLE THEODORE LEVIN, Judge of the United States District Court for the Eastern District of Michigan, Southern Division, together forming a Three-Judge United States District Court constituted under 28 U.S.C. § 2284, pursuant to 28 U.S.C. § 2281,

Respondents.

SUPPLEMENTAL BRIEF

Thomas M. Kavanagh
Attorney General of the State of Michigan

Samuel J. Torina
Solicitor General of the State of Michigan

Counsel for Petitioners
The Capitol, Lansing 2, Mich.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1957 — No. 74 Misc.

G. MENNEN WILLIAMS, Governor of the State of Michigan,

- and -

THOMAS M. KAVANAGH, Attorney General of the State of Michigan,

Petitioners,

v.

HONORABLE CHARLES C. SIMONS, Chief Judge, United States Court of Appeals for the Sixth Circuit,

HONORABLE ARTHUR F. LEDERLE, Chief Judge,

- and -

HONORABLE THEODORE LEVIN, Judge of the United States District Court for the Eastern District of Michigan, Southern Division, together forming a Three-Judge United States District Court constituted under 28 U.S.C. § 2284, pursuant to 28 U.S.C. § 2281,

Respondents.

SUPPLEMENTAL BRIEF

For the further information of this Honorable Court we are including a transcript of the argument of the Motion to Dismiss a Temporary Injunction, dated January 29, 1957 (Appendix 1 of this Brief) and Transcript of Proceedings on Motion to Dissolve Temporary Restraining Order, dated March 8, 1957 (Appendix 2 of this Brief) which we believe will further clarify our position in this matter.

Again, we respectfully urge that the writs applied for are appropriate because in a case of great public importance, the respondent Court has for an unreasonable length of time refrained from performing the judicial function of granting or denying the interlocutory injunction sought by complainants, or denying defendants' Motion to Dismiss the complaint, meanwhile continuing in full force and effect a Temporary Restraining Order issued by a District Judge. This was done despite the fact that the case was ripe for disposition, as asserted by District Judge Lederle, on the two occasions when the matter was argued before the respondent Court (see Appendix H and Appendix K of our prior brief). The effect of the Court's inaction was to grant the complainants the relief they sought by restraining the Governor of the sovereign State of Michigan from the performance of a clear duty laid down by Michigan's Constitution and laws.

For the further information of this Honorable Court, petitioners state that the present status of the criminal case entitled, People v. Voisine, et al, was set for trial for September 9, 1957, and on that date the defendants in the criminal case appeared in court, but objected to proceeding with the trial, counsel for the various defendants pleading the press of other litigation as the basis for a continuance. The result was that the Hon. Frank Fitzgerald, Presiding Judge of the Wayne Circuit Court, granted a continuance until November 12, 1957. Petitioners point out that this date is subsequent to the election date for the City of Ecorse, and that the defendant William Voisine and other defendants are candidates for public office in Ecorse at said election; that it is the position of said defendants, Voisine, et

al, that they may not be removed from office if they are re-elected at said election, for acts committed in a prior term of office.

Respectfully Submitted,

Thomas M. Kavanagh
Attorney General of the State of Michigan

Samuel J. Torina
Solicitor General of the State of Michigan

Counsel for Petitioners
The Capitol, Lansing 2, Mich.

APPENDIX 1

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIAM W. VOISINE, FRANCIS LaBADIE, ALBERT BUDAY and ELMER KORN, Complainants, vs. JOHN W. CONLIN, G. MENNEN WILLIAMS, THEODORE R. BOHN and THOMAS M. KAVANAGH, Respondents.	No. 16338.

Proceedings had before the Honorable Charles C. Simons, Chief Judge of the Circuit Court of Appeals, The Honorable Arthur F. Lederle, Chief District Judge, and The Honorable Theodore Levin, District Judge, sitting as a statutory three-judge court, at Detroit, Michigan, on Tuesday, January 29, 1957, at 10:00 o'clock in the forenoon.

APPEARANCES:

MR. FRANCIS K. YOUNG,
Appearing for William W. Voisine

MR. JEROME P. CAVANAGH,
Appearing for Francis LaBadie

MR. MICHAEL A. GUEST,
Appearing for Albert Buday

MR. JOSEPH FREED,
Appearing for Elmer Korn

MR. JOSEPH A. SULLIVAN, Deputy Attorney General,

and

MR. NICHOLAS V. OLDS, Assistant Attorney General, Appearing for the respondents.

MR. HOBART TAYLOR, Jr., Assistant Wayne County Prosecutor,
Appearing for The Honorable Theodore R. Bohn, Judge of the Wayne County Circuit Court.

Detroit, Michigan,
Tuesday, January 29, 1957,
10:00 o'clock A.M.

PROCEEDINGS

JUDGE SIMONS: Will you call the case that is set for hearing before this statutory court.

THE CLERK: William W. Voisine, Francis LaBadie, Albert Buday, and Elmer Korn, vs. John W. Conlin, Probate Judge Washtenaw County, G. Mennen Williams, Governor of the State of Michigan, Theodore R. Bohn, Circuit Judge Wayne County, and Thomas M. Kavanagh, Attorney General of the State of Michigan.

JUDGE SIMONS: You may proceed.

MR. YOUNG: May it please this Honorable Three-Judge Court: I am attorney for one of the complainants, William W. Voisine, Mayor of the City of Ecorse.

The only question I first wish to propound to this court is whether or not you wish to take my argument upon the bill of complaint or whether the court desires to proceed with the motion to dismiss that the defendants of the State of Michigan have filed. That is merely a matter of procedure.

JUDGE SIMONS: The motion to dismiss is based, as I glanced through it, on allegations that this court has no jurisdiction. If we have no jurisdiction there is no use going into anything else. How much time would you want to present your view of that question?

MR. YOUNG: My view in reference to the jurisdiction, may it please this Honorable Court, on the question of jurisdiction, will not take too long.

JUDGE SIMONS: What do you mean "too long"? Fifteen minutes?

MR. YOUNG: Or maybe twenty.

JUDGE SIMONS: You may proceed.

MR. YOUNG: I hate to split minutes with the court.

In the first place, the question of jurisdiction is determined by the statute creating the three-Judge court. It is clear and plain under Title 28, 2284, of the United States Code Annotated, which I have set forth in Paragraph One of the bill of complaint, that if we have raised a sufficient constitutional question this court has jurisdiction.

JUDGE SIMONS: Doesn't that question have two parts? First, is there jurisdiction in the court to entertain the bill of complaint and whether or not the court has power to grant the injunction sought?

And the other question that has been developed by the decisions of the Supreme Court as to whether, even if it has power, whether it is appropriate to act upon it in view of the Federal relationship between the constitutional powers and those of the state.

MR. YOUNG: I think you are correct, Mr. Justice Simons, that it breaks itself down into those two parts. In other words, with this one modification, that on the motion to dismiss the allegations of our bill of complaint must be presumed to be true. Whether or not this court eventually decides that there is jurisdiction to grant us relief on the merits again becomes one point. But whether or not we have the right to be here and present our case is another point. In other words, as we are here this morning, what

we are technically asking this court to do here amounts to, as we reduce it to its greatest simplification, is this: is to prevent by this court's injunction the Attorney General of the State of Michigan, the Probate Judge of Washtenaw County, and the other defendants from proceeding with an ouster and/or removal proceeding, which arises out of what we contend is an unconstitutional act by a one-man grand juror, arising out of an unconstitutional act of the State of Michigan which motivated or started the proceeding in operation, until and when we can meet a criminal case which is pending in the Circuit Court for the County of Wayne, and which arises exactly out of the same circumstances.

JUDGE SIMONS: Isn't there a basic question preliminary to that, and that is whether the State itself has power to consider the issues that are involved in this prayer for an injunction, and the constitutionality of the State statute?

MR. YOUNG: I do not believe, when it becomes a question of selecting the forum, may it please the court, that it is always necessary for us to select or go through and exhaust remedies.

JUDGE SIMONS: Well that is rather a general principle, is it not?

MR. YOUNG: It is a general principle.

JUDGE SIMONS: We have had it here before.

MR. YOUNG: It is a general principle in the ordinary procedure; in other words, this court had before it,—your Honor had before you, with Mr. Justice Levin and Mr. Justice Picard, the Albertson vs. Millard case.

JUDGE SIMONS: That is only one of many.

MR. YOUNG: Right. Now subsequent to that and in three volumes later, in the Dowd vs. Hodge case, decided March 26, 1956, the Supreme Court of the United States in the words of Mr. Justice Minton, stated that they might come in direct or plaintiffs might come in direct to a three-Judge Court.

Mr. William C. Wines, an Assistant Attorney General of the State of Illinois in his brief immediately preceding the opinion of Mr. Justice Minton, as shown in Law Edition, raised the very point that your Honor asked of me. He stated that the complainants—and I read from page 578 of 100 Law Edition, which is 350 U.S. at 485. Mr. Wines stated in his brief this:

> "Where plaintiffs have a clear and adequate remedy in the State courts, as they do here, the Federal courts will not entertain equity jurisdiction to pass upon the constitutionality of State legislation."

Thereafter there are certain cases cited.

However, the Supreme Court of the United States disregarded or swept aside the arguments of the Attorney General of the State of Illinois, and sent the matter back to the three-Judge court in Illinois with these words, which I quote from page 579:

> "We hold that the District Court had jurisdiction of this cause. It was error to dismiss the complaint for lack of jurisdiction. The judgment of the District Court is vacated and the case is remanded to it. We do not decide what procedures the District Court should follow on remand."

Now this is the latest case that I have been able to find in the United States. It is Dowd vs. Hodge.

And again we have still another case. I want to cite from ie work of Barron and Holtzoff, Volume 1, page 631, Sec- ion 352, and we are again talking about three-Judge courts s created by the statute which I have cited:

"Jurisdiction is to be determined from the allegations of the complaint and has nothing to do with the merits."

It cites then the case in 31 in the notes.

"Thus if alleged violations of the fourth and fifth amendments to the Constitution form the sole basis of the relief sought and the allegations show a violation of plaintiff's legal rights, the court could not dismiss the action for want of jurisdiction as patently without merit."

That cites note 32.

"A motion to dismiss should not be granted without making certain that jurisdiction is lacking and cannot be shown by amendment."

Now in the notes there is cited the case of Sullivan vs. Title Guarantee & Trust Co., from the District Court of New York in 1947, which is 74 Fed. Supp. 964, where, and I read the headnote from Barron & Holtzoff:

"Action in Federal district court against testamentary trustee by sole beneficiary for damages from improper administration of trust or restoration of corpus of trust and for an accounting was not subject to dismissal on ground that court had no jurisdiction to administer decedent's estate, since administration was not thereby attempted."

And if we go on and read that, there was likewise certain remedies existing in that particular case in the courts of the State of New York.

JUDGE SIMONS: That is between private parties?

MR. YOUNG: That is between private parties, yes. Now Dowd vs. Hodge—Mr. Hodge I believe was Treasurer of the State of Illinois, and recently was involved in a scandal over there. But at the time this case came up he was not involved in a scandal. And the plaintiffs in that case sought to restrain certain actions of State officers in behalf of the State of Illinois. In other words, they were attempting to administer state statutes and they were actually proceeding in the same manner as we are here, asking that certain things be restrained, and technically it is pretty much the same as we are here. That is what it reduces itself to.

And again, I wanted to complete the statement that I started to make before: when our bill of complaint is read we are not seeking to restrain the enforcement of a criminal statute in the State of Michigan, such as was before this Honorable Court in the case of Albertson vs. Millard, nor are we seeking to restrain the actions of the one-man grand juror, as was before the Honorable Mr. Justice Levin in the case of the Society of Good Neighbors vs. Groat.

What we are seeking to restrain in this case might be likened to this; and your Honor has been on this court as a District Judge and then as an Appellate Judge for many years, and you know this situation readily to exist. And I might liken it to an income tax evasion case. All three of your Honors have had this experience. A man is indicted for income tax evasion or fraud; likewise at the same time a civil suit has been filed by the United States District Attorney to collect those taxes. Now in this court, this Honor-

able United States Court, what has always occurred, at least in the only experiences I have had here, is that always this court requires the criminal case to proceed ahead of the civil case in order that the doctrine of self-incrimination of a defendant or the opportunity for him to present witnesses in his own behalf in the civil case might be had. Now whether that is a matter of policy or whether it is a matter of law—of course, I contend it is a matter of law. That has occurred time and time again in this case.

The State of Michigan in their brief raised the question of an assault and battery case, which to me is beside the point. I would rather take the income tax case because that occurs in this court all the time when men are indicted for evasion or fraud.

Likewise the District Attorney at one and the same time will file suit for thousands or millions of dollars and this court immediately brings them to trial in the criminal case. They do so for one reason, so that a man in the civil case may not be compelled to testify against himself. He may be able to get witnesses in his own behalf. There is no question of self-incrimination.

Now all we are really asking this court to do in this particular complaint,—and even though it happens to be against actions under a State statute which we contend is unconstitutional in its operation—we think this court has jurisdiction because what we want to do here is this: in behalf of the complainants we are ready, willing and able to go to trial in the criminal case in the Circuit Court for the County of Wayne. We have done nothing whatever to delay going to trial in the alleged conspiracy case. However, we are faced with this particular dilemma and that is why we come into this court and ask relief. As I set forth in a supplemental answer that I filed this morning—and I must

apologize to the court for not being able to file it before because time just didn't give me an opportunity—but I had only twenty-four hours in which to make up my mind whether to select the three-Judge court as a forum or whether to go to the Supreme Court. That is all I was given by the defendant, the Honorable John W. Conlin of Washtenaw County. I had to make up my mind what I was to do. That was January the 9th.

I was then told, and it shows in the record here, that unless I had something done by January the 16th they would proceed to a hearing. I therefore had from somewhere around January the 9th at noon until Monday, January 14, to prepare and file a bill of complaint and get it on file in this court.

JUDGE SIMONS: You need not waste any time on that. We will receive your supplemental memorandum.

MR. YOUNG: I appreciate that. I merely point that out to show that full consideration of the elements were not brought in.

So now we are faced now in behalf of William W. Voisine, with this one problem: if we had to go to a hearing in a removal case, Mr. Voisine is willing to take the stand; however, when we look at the removal charges, which is an appendix attached to the bill of complaint, we find this situation: in the criminal case they have two men named as defendants, namely, Paul Sackenheim and Joe Kovalchik, who are defendants in a conspiracy. And then we find in the removal hearing that they have two people who claim to be witnesses against us in the removal, which are Paul Sackenheim and Joe Kovalchik.

Likewise in the information on file in the Circuit Court,

which is an appendix filed to the bill of complaint, the information lists certain witnesses and they have a man by the name of Page and a man by the name of Edwards.

In order to prepare to meet charges—and the State concedes in their brief in the removal that their removal evidence is going to be conspiracy evidence, which obviously means that they are going to present hearsay testimony—Mr. Voisine finds that not only is his own testimony necessary but it may be necessary for him to have testimony of some other people who are co-indictees with him in this conspiracy case.

Therefore, after the removal proceedings were filed, the first thing that I did was to contact Mr. Charles Jones, former Judge of the Recorders Court of the City of Detroit and say to him:

> "Mr. Jones, I would like for you to look at these removal charges, because it becomes immediately apparent that in the event at the hearing of the removal, particularly this conspiracy, this man testifies that he heard one of your clients say thus and so, that I will need their testimony."

Mr. Jones said to me—this in my supplemental answer or supplemental bill of complaint, because I filed it with the State as an affidavit—he said to me:

> "I doubt if I would permit any of my clients to testify in the Civil and/or the removal proceeding prior to the time that they are faced with the testimony in the criminal proceeding, because of the fact that they might be involved in the doctrine of self-incrimination."

I likewise then asked Mr. Lawrence E. Burns, who is at-

torney for Mr. Sackenheim and Mr. Kovalchik, who appear as defendants in the criminal conspiracy indictment in the Circuit Court, and who also appeared as attorney before the grand juror for the men Page and Edwards who are named as witnesses in the criminal case against us—I said to Mr. Burns:

> "It is quite possible that in the removal proceeding of Mr. Voisine if they present conspiracy or hearsay testimony that I may need their testimony."

He said:

> "You can't have their testimony until such time as we have met the criminal proceedings."

I raised all of this with the State of Michigan. In the removal proceeding I filed all of these replies. All that I am asking this court to do is not to restrain the criminal proceeding in the Circuit Court—that is before Judge Frank Fitzgerald now and they may set it for trial next week if they desire; they can issue notices of trial and we are ready to proceed. We are not asking that. We are not asking that the grand juror be restrained from further investigating of crime within the purview of the petition. But we are asking that we be given a fair and impartial chance to meet the removal proceeding. And I do not understand, Mr. Justice Simons, how I may possibly do that as attorney for Mr. Voisine unless in some way I am given an equal opportunity to have witnesses for the defense. That is the big problem that I have been confronted with.

The one-man grand juror has subpoenaed many people from the City of Ecorse. I went throughout the city of Ecorse checking around in reference to witnesses, and I then ran into this particular fact, that certain people have

been subpoenaed and have testified before the grand jury who are not listed either as co-indictees or witnesses. They say:

> "Mr. Young, I have been subpoenaed before the grand jury; I cannot talk to you."

Therefore I am blocked out from even talking to those witnesses. I am even blocked out from finding out whether or not I can use these people in defense. In other words, this matter in the removal proceeding is a civil proceeding. All that is necessary to do is to examine the State's brief—and it is an excellent brief on removal proceedings—and the Governor's letter attached to their bill of complaint, and he recognizes that there is no rule or procedure set up in removal proceedings. Therefore we do not know exactly where we are going.

I have no remedy of discovery, interrogatories; I am unable to present or prepare a defense in advance; I have to take their removal charges as they are written and struggle along.

When you say to me exhaust my remedies, we can proceed with the removal hearing for a week or ten days; Mr. Montry who testified at the preliminary examination to nothing but hearsay may take the stand and I call one of these witnesses, and he comes in and he says:

> "I refuse to testify in this proceeding because I am indicted in the criminal proceeding and whatever answer I may give may tend to incriminate me under both the laws of the State of Michigan and the Fifth Amendment."

Now where am I? I cannot get a fair and impartial hear-

ing. I then find myself in the problem of due process of law. And that is all that I am asking this court to restrain.

JUDGE SIMONS: Well the privilege that is created by the Bill of Rights is personal with the witness. You cannot assert it on your behalf. He must assert it on his behalf.

MR. YOUNG: That is correct.

JUDGE SIMONS: I do not see what that has to do with this issue here at all.

MR. YOUNG: It only has this, that I cannot obtain a fair and impartial hearing in the ouster and/or removal proceeding. Then we get into the case of Griffin vs. Illinois, which is in 100 Law Edition. In that case—and that was a criminal proceeding,—and when we arrive at that particular case the State of Illinois refused to provide an accused with the transcript of testimony in a criminal case. Finally when it reached the Supreme court of the United States they stated that the refusal to provide the accused with the transcript of testimony lacked due process of law, and remanded it. And in this case they had exhausted all of their remedies.

JUDGE SIMONS: And you haven't.

MR. YOUNG: No, I haven't exhausted them, although I am here probably two or three weeks ahead of what situation would or could develop. I have no remedy before the Governor of the State of Michigan, — I mean the State Supreme Court. If your Honor will read People ex rel. Coffey and Borne vs. Dillman, our Supreme court of Michigan has definitely and consistently refused to review the acts of the Executive.

JUDGE LEVIN: Unless they are illegal or arbitrary.

MR. YOUNG: That is correct. If they become illegal or arbitrary. In other words, I take this position and we arrive at the same position two or three or four weeks from now that we arrive at today. I would not be before this court stating that this situation would not exist unless I had attempted to prepare my case and had explored the possibility of witnesses in behalf of Mr. Voisine, and I have done that to such an extent that I find that when I get to the removal hearing the State of Michigan will have their own way.

They have the ability to use grand jury subpoenaes to bring people down to the grand jury and then bring them to the removal proceeding to testify. I must use an ordinary justice of the peace subpoena and bring them in.

I have talked to enough to know that they will refuse. Now just exactly in this exhaustion of remedies it comes down to this one point: just exactly what particular point—or what particular witness may refuse; I cannot answer your Honor this morning because I have not arrived to that point. It may be Mr. Sackenheim's testimony that I need; it may be Mr. Kovalchik; it might be Mr. Page or Mr. Edwards or some of our co-indictees, Mr. Bobo, Mr. Lackey, Mr. Gillman, Mr. Jones, or many others. But they are co-indictees in a criminal indictment; they are entitled not to take the stand against themselves at least until such time as the State has presented its case. They are entitled to a speedy trial by jury. And we are ready to meet a speedy trial by jury. That has not been given to us. That is all that we are asking.

JUDGE SIMONS: The power of removal is a constitu-

tional right in Michigan as it is in other States. It is not dependent upon conviction, necessarily.

MR. YOUNG: That is true.

JUDGE SIMONS: An officer may be removed for conduct unbecoming an officer.

MR. YOUNG: That is true.

JUDGE SIMONS: You are entitled to notice and a hearing. You have had a notice, have you?

MR. YOUNG: I have had a notice; it is attached to the bill of complaint.

JUDGE SIMONS: You have had a hearing?

MR. YOUNG: No we have had no hearing.

JUDGE SIMONS: Before the Probate Judge designated by the Governor?

MR. YOUNG: Only to the effect—the only hearing we have had before the Probate Judge to and including this time is that we have objected to proceeding on the ground that we cannot obtain a fair and impartial hearing; and in the supplemental bill of complaint—in the supplemental bill of complaint which I filed this morning I raised certain points that we had raised before the Probate Judge, the Honorable John W. Conlin, one of the defendants herein.

I quoted certain of the testimony directly out of the transcript. And Judge Conlin stated that why he was adjourning the matter—on page 205—

"It seems to me in view of the serious nature of the question involved in this matter and as to the constitutionality of the—not of the Act itself but the type of proceeding that is pending as to whether it is due process, that the officers involved should be given an opportunity to apply to Federal Court and see if the Federal Court considers it of sufficient importance to grant a temporary stay as far as this hearing is concerned. Now this is the 9th day of January, and Mr. Young has informed me that he proposes to have the application filed by the 14th. A certificate of the stenographer indicates that he will have the transcript ready by the 16th of January, which would be a week from today. So far as today is concerned we will adjourn this matter until the 16th with the understanding that if by the 16th the officers"—

and that is the complainants here—

"have filed their application for their relief in Federal Court and have noticed it for hearing by the 12th of January, then on the 16th it will be adjourned until the 23rd of January. Now that will enable the matter to be heard on the 21st. But of course there are always matters that interfere with the hearing on the first date noticed. On the 23rd I will feel this way: that if the matter is adjourned for any reason by the Attorney General"—

that is the defendants—

"then definitely the officers should be entitled to an adjournment beyond the date of hearing requested by the Attorney General. However, if the request for adjournment comes from the attorney for the officers"—

that means this side of the table; if we dare ask this court for an adjournment—

> "who are respondents in this case then I would say that we should proceed on the 23rd to start taking testimony."

Now that brings us down to this point: we have not delayed the ouster or removal proceeding irrespective of what the defendants state in their brief. On approximately the first day of November Mr. Voisine was served with the removal proceeding. As of that day Mr. Voisine was in a preliminary examination out before the justice of the peace in Grosse Pointe and we were served at recess time. It was noticed for the 13th of November. As the 13th of November came close, I spoke to the Deputy Attorney General and stated that we would not have time to prepare any defense and we weren't through with the preliminary examination, and we didn't know what was going to occur, and I suggested that we work out some adjourned date.

It was thereupon adjourned until November 21st by the Honorable John W. Conlin. On November 21st before the Honorable John W. Conlin the removal proceeding came on and at that time I filed a motion and likewise the other gentlemen likewise did, raising these particular problems that we could not meet certain situations and prepare adequately for our defense.

The Governor of the State of Michigan wrote a letter on the 20th day of November which was read into the record on the 21st; that is attached to the bill of complaint. The Governor of the State of Michigan, however, left on that particular day for South America and was not available thereafter for some period of time.

Judge Conlin read that into the record on the 21st. After we argued our situation, much as we are arguing it here, and our inability to presently present a defense, Judge Conlin stated,

> "Rather than consume a day or two in argument I think I want briefs filed."

This appears in the two transcripts I have here,—

> "That I will have briefs required from the officers and complainants by December the 12th; Mr. Farmer the Assistant Attorney General should reply by December 17th; you may come back in court before me on January the 7th, and I will rule on whether or not the proceeding should go ahead or proceed."

On January the 7th when we appeared before Judge Conlin he gave a decision in substance and in effect that he had no authority except to take a transcript of testimony and to hear it and to present it to the Governor, but that he would give me until January the 9th in order to determine whether or not I should attempt to seek a writ of prohibition or come before the three-Judge court.

JUDGE SIMONS: Well now has he, Judge Conlin, made any findings growing out of such hearing as was held?

MR. YOUNG: Yes, he denied our rights that we raised which are now repeated in this bill of complaint, and he denied that we would be denied due process of law in having a fair and impartial hearing. He denied everything that we requested. All of those documents are not before this court.

JUDGE SIMONS: You do not contend, do you, that under

the Michigan statute governing the removal proceedings you are entitled to a trial under the forms of trial in litigation generally? The Governor has to be satisfied that there has been some conduct on the part of the persons sought to be removed that was inimical to the welfare of the State of Michigan, and if he makes that decision you can attack it, can't you, in the Michigan courts as being arbitrary or capricious or without a hearing or without notice or any of the safeguards that are contained in the removal statute, in the courts of Michigan?

MR. YOUNG: That is questionable under the decision of People ex. rel. Coffey. In other words, if I am limited to certiorari, I am limited to but a few things, and I want to call this court's attention now to the case of Duncan vs. Kahanamoku, which is the Pearl Harbor case.

I believe in the judicial processes. I think that when a matter arises out of a one-man grand jury which is one and the same thing,—in other words, the events the State concedes in their brief before Judge Conlin are one and the same thing. If they were attempting to remove us under the separate removal statute which they could have initiated by completely separate evidence, we would not be here. But the one-man grand juror filed an indictment, then he filed a removal proceeding arising out of identical facts and circumstances. It is my contention that there we have —and this has not been tested—the right of a trial by jury.

It is just the same, your Honor, as saying that I—

JUDGE SIMONS: You mean you have a right to trial by jury in a removal proceeding?

MR. YOUNG: So far the matter hasn't been tested. I mean the Constitution of the State of Michigan—

JUDGE SIMONS: Well we still get back to the question whether this Federal statutory court has a right to enjoin the Governor of Michigan and the State officers of Michigan in their exercise of the constitutional power to remove an officer, when the Governor is satisfied that something inimical to the welfare of the people of the State of Michigan is involved. That is the question in this removal statute.

MR. YOUNG: That is one of the questions involved here.

JUDGE SIMONS: That is the question.

MR. YOUNG: That is the question, but we come to this court—

JUDGE SIMONS: And you do not have the right to trial by jury on that question. It is the authority—

MR. YOUNG: It is not prescribed by law, no.

JUDGE SIMONS: And if a denial of the right to trial by jury is an invasion of due process, the Michigan courts could determine that, couldn't they?

MR. YOUNG: Maybe they could and maybe they couldn't. I mean we have nothing whatsoever at this stage where we could go into the Michigan courts. We would find ourselves in this particular position: it is my understanding of the three-Judge statute that when we come in and allege that under the Constitution of the United States, that if irreparable damage and injury will occur, that this court has authority to issue an interlocutory injunction until it can inquire into the merits to see whether or not our constitutional rights are violated.

JUDGE SIMONS: All right; we understand that point. Now is there anything else, any other ground that you have for sustaining the jurisdiction of this court?

MR. YOUNG: That is all I can present.

JUDGE SIMONS: All right, then, let us hear from the Attorney General.

JUDGE LEDERLE: May I ask a couple questions of Mr. Young?

MR. YOUNG: Yes, Mr. Judge Lederle.

JUDGE LEDERLE: I wonder if this isn't the analysis of your problem? The City of Ecorse is a creature of the sovereign State of Michigan, having only such power as has been conferred upon it by the constitutional provisions plus the statute or whatever statutes are involved. The legislature in its wisdom has provided that under certain circumstances the Governor may remove an official elected by that subsidiary governmental agency, the municipality.

The Governor at this time, acting through the system set up by the legislature, is conducting an investigation. The purpose of this investigation is to give him information upon which he can act in accordance with the mandate that he received or the power that he received from the State legislature.

A portion of that investigative process consists of a hearing before a specially designated officer. The fact that that officer must be a judicial officer is merely incidental. And you are asking at this time, not that this court enjoin the Governor from removing the official, but you are asking the court at this time to order the Governor of the State

of Michigan to discontinue the investigation that he is now conducting until such time as you may have a final decision on some alleged criminal conduct of the office holder.

What constitutional right under the Federal Constitution do you think is violated in conducting this investigation?

MR. YOUNG: The only thing that I can answer you in that respect, Mr. Chief Judge Lederle, is this: that we have had during the last few years many, many investigations before various types of investigating bodies, wherein testimony has been presented against a man, and the most precious thing that he can possibly have—that is his reputation—is completely and thoroughly destroyed.

JUDGE LEDERLE: Let me interrupt you there.

MR. YOUNG: Yes.

JUDGE LEDERLE: Do you have anything involved in this removal proceeding other than what has been referred to in Michigan as the property right of a public official to collect his salary?

MR. YOUNG: We have the reputation of these men. In other words, it can be involved this way, your Honor: let us assume that—

JUDGE LEDERLE: Well I didn't want to start you off on the wrong tack. Let us come back. You fear that eventually when the Governor gets all the information that he is now seeking, that he may act in such a way as to violate the constitutional rights of your clients?

MR. YOUNG: I fear this, your Honor, and it is very

close to that, that when I get into the removal proceeding that they will present on the stand certain witnesses who will testify to certain things.

JUDGE LEDERLE: Well Mr. Young, I am one jump ahead of you.

MR. YOUNG: I know that. I am trying to catch up.

JUDGE LEDERLE: Until the Governor acts, Voisine and the other plaintiffs have lost nothing, have they?

MR. YOUNG: They are being compelled to make a defense in a removal proceeding which will completely and thoroughly expose any defense that they have in the criminal proceeding and which will compel each and all of them to testify against themselves in the criminal proceeding. You know what will happen, your Honor. These men start to take the stand in the removal proceeding, and the grand jury testimony is then brought out to impeach any witness that we may bring in. It has all been kept secret from us. I have no idea what it is.

JUDGE LEDERLE: If I could stop you there. I don't want to take up too much time here. I will repeat what I said before: you fear that the Governor may act illegally in removing your client. Wouldn't these arguments about the invalidity or the unfairness of this hearing be properly addressed to the Governor in the first instance? Assuming that the Governor decides that you are right, that you didn't have a fair hearing before the officer that he appointed to conduct the hearing and he decides not to remove him, that is it, isn't it?

MR. YOUNG: That ends the matter, that is true. But the Governor has in his letter attached to the answer given

the Probate Judge, who is one of the defendants here, certain discretionary powers. We have argued this same matter before the Probate Judge and he has determined that he should go ahead.

I am concerned about such record as I may be able to present to the Governor. If the Governor of the State of Michigan is not conducting the removal hearing he is taking it from the transcript in the nature of a referee. There will be perhaps two or three thousand pages or more of testimony. I cannot expect the Governor of the State of Michigan to read and analyze each of those pages. He will be bound to rely somewhat on his advisor. I do not know how much time he will give me.

I merely am stating at this point that from the standpoint of the concept of the judicial processes of the United States and of this honorable court that we are not in such a great emergency, certainly not to equal the Pearl Harbor situation, where that there would be any harm in delaying the ouster or removal proceeding until such time as the State of Michigan will set the criminal proceeding for trial, and then all of the grand jury secrecy and everything ends and I must proceed.

And that is a matter of what? They may set the trial merely by the issuance of a notice. But I cannot control that. I find myself on the other end, and I find that it is necessary for me, when I get to the Governor, to have a record there the same as I would be before your Honor.

JUDGE LEDERLE: Well after you have said all that, you are right back to where you started from. You are afraid that the Governor may act in violation of the plaintiffs' constitutional rights.

MR. YOUNG: That's right. And I think under the three-Judge court this court has the right to assume that I may have, because of those fears of irreparable damage and injury, the right to stay or an injunction which would delay that until such time as the criminal courts in the State of Michigan, particularly the county of Wayne, may move this indictment to a trial, which they can do merely by the prosecutor and assignment clerk or the Attorney General or whoever is handling it sending out a notice for trial.

JUDGE LEDERLE: Have you asked for a trial?

MR. YOUNG: Yes, I told them before Judge Conlin on January the 9th, I told them I was ready to go to trial, and under the Constitution of the United States that we are entitled to a speedy and impartial trial by jury. We are ready to go to trial. We have some preliminary matters of arguing a motion to quash and it may be argued at the start of the trial and we may proceed. And then all of this is obviated and my problem of witnesses becomes easy. The grand jury secrecy from these witnesses disappears. I may have the right as counsel to talk to them and to find out what their story is going to be.

And why I came here is that I am trying to come here three or four weeks before I find myself involved with two or three thousand pages of testimony and find myself in a situation where now somebody refuses to testify and I can't properly present a record to the Governor. And then it is true I must go to the Governor. But that costs the complainants here thousands upon thousands of dollars, and will cost the State of Michigan thousands upon thousands of dollars, and we are back right at the same situation that we may assume will occur and will exist, which is before this three-Judge court this morning.

JUDGE SIMONS: Now have you finished your attack upon this motion to dismiss?

MR. YOUNG: Yes.

JUDGE SIMONS: We will hear from the Attorney General in behalf of the State.

MR. OLDS: May it please the court, we have filed in behalf of all the defendants a motion to dismiss, and accompanied that with an exhaustive brief supporting our position.

The most important part of the motion to dismiss is that which relates to the issue of lack of jurisdiction on the part of this court to entertain this bill of complaint.

In the fore part of the brief we have traced the history of the grand jury statute and the decisions. We have also cited many cases involving removal proceedings, which have been passed upon by our Supreme Court.

And right at this point I would like to say, in answer to my brother, that our State procedure in our State courts does provide an ample remedy for reviewing removal proceedings. That is indicated by the fact that we have listed at least twelve cases or more, in which our court reviewed removal proceedings, in some instances supporting the decision and in several instances upsetting the decision that was made by the lower, original body.

But let us turn to this basic question, jurisdiction. And I would like to discuss with your Honors three cases that are decisions of the Supreme Court of the United States. These cases begin on page 21 of our brief.

The first one is In Re Sawyer. This case arose out of the action of the mayor and common council of the City of Lincoln, Nebraska, against a police judge. During the pendency of the removal hearing before the mayor and common council of that City against this police judge, by the name of Parsons, he went into the Federal District Court and secured a temporary restraining order restraining the city officials from proceeding with the removal proceedings. For some reason not explained in the opinion those officials ignored the court's restraining order, and proceeded with the removal hearing and removed Mr. Parsons and appointed someone else in his place.

Thereupon the police judge went down to the district court, called the circuit court there, and secured an order to show cause for contempt, and on the hearing of that contempt the Federal judge found the defendants,—that is the mayor and the common council,—guilty of contempt and turned them over to the custody of the marshal.

Thereupon Mr. Sawyer, who was one of the—I think he was the mayor—sought a writ of habeas corpus, and it was on that writ that the matter came before the United States Supreme Court.

The Court reviewed the whole history of the equitable jurisdiction of the Federal Courts as well as the State Courts, and determined that the District Court had no jurisdiction, had no power, had no authority even as much as to issue the restraining order, or even to entertain the bill, and therefore released the mayor and the common council on the writ of habeas corpus.

I need not review the words that were used, but it is to the effect:

"Our holding is that equity does not as a general rule have jurisdiction to enjoin the removal of a public officer."

Then the next case that came before the United States Supreme Court was the White vs. Berry case. In that case a Federal officer was involved, an employee of the Treasury Department. And there again the officer sought to be removed tried to secure a restraining order from a Federal District Court, and in that case the United States Government itself contended that the equitable powers of the Federal District Court did not include those of interfering with removal proceedings, and incidentally prevailed in that contention, because the court referred back to the Sawyer case and held that a Federal District Court had no jurisdiction, no power, to in any way interfere with the conduct of removal proceedings of a Federal officer.

The next case is Walton vs. The House of Representatives of the State of Oklahoma. There the House of Representatives was acting as prosecutor for impeachment of the Governor, before the Senate presided over by the Chief Justice. And during the removal proceedings the Governor tried to get an injunction from the Federal District Court, —and I might say, your Honor, that in all these cases all the issues and the defenses that I have heard this morning were urged and raised in these cases, every one of them: the violation of the Federal Constitution; the violation of due process; the right to a jury trial; the Fourteenth Amendment, and so on. And there again the Supreme Court of the United States in an opinion that was only a paragraph long referred back to the Sawyer case and said that the District Court rightfully in that case denied the restraining order and denied the injunction.

Now we come up to the very late case of Wilkowski,—

Anthony Wilkowski recently was elected to the Senate of the State of Michigan. He was denied his seat by a vote of the Senate because of a felony conviction that had been made against him some years back. He sought to review that by attempting to get our Supreme Court to issue a writ or mandatory injunction directed to the Lieutenant Governor, requiring the Lieutenant Governor to administer to him the oath of office. And that of course was denied and he appealed directly to our Supreme court, to the United States Supreme Court.

JUDGE LEDERLE: Mr. Olds, aren't you talking about all matters now after the Governor had acted?

MR. OLDS: No, your Honor; in the Sawyer case they sought and secured a restraining order while the proceedings were in progress. The same thing applied in the White vs. Berry case. The Federal Officer sought an injunction to stop the proceedings. And the same thing in the Walton case against the House of Representatives; while the proceedings were on he sought an injunction—exactly what is being attempted here.

JUDGE LEDERLE: Did the court grant it?

MR. OLDS: Not in the Walton case they didn't, nor in the Berry case. In the Sawyer case the District Court granted it and then brought him in for contempt for violating it, and then the Supreme Court of the United States released them on habeas corpus because the district court had no jurisdiction to even issue it.

JUDGE LEDERLE: In other words, your authorities that you are citing add up to the fact that the Federal Court has no authority to enjoin the Governor from con-

ducting an investigation for the purpose of determining whether an officer should be removed.

MR. OLDS: Exactly, and that rule, your Honor, not only applies to the Federal Courts, it applies even to the State Courts. If these people had gone into a State court, into our court, and sought an injunction the same rule would have applied there, because all you have to do is read the citations that we have here.

JUDGE SIMONS: There has been a recent Illinois case cited to us. I didn't quite follow what happened there.

MR. OLDS: I am familiar with that. That is Doud vs. Hodge.

JUDGE SIMONS: What happened there?

MR. OLDS: Now we have to distinguish here between cases where people seek to redress proprietary rights or even personal rights as against cases in which public officials are concerned with their removal or non-removal.

In the Doud vs. Hodge, the State legislature of Illinois had passed a law licensing the business of discounting checks or of cashing money orders. And in that statute they had exempted the Western Union and the various other established organizations that issue money orders. Mr. Doud was just an individual that did that business. And he claimed that that statute violated his constitutional right of equal protection that is guaranteed him under the Constitution. But remember he was a private citizen.

JUDGE SIMONS: He was not an officer.

MR. OLDS: He was not an officer. He was trying to

vindicate a private property right. And we are not claiming that the Governor of our state can trespass on a person's property and say that the person whose property it is is powerless to seek remedies. That is not what is involved here. What is involved here is an attempt by these people who are public officials to stay the hand of the Governor in doing his constitutional duty in conducting a removal proceeding.

JUDGE SIMONS: That removal proceeding has not been completed.

MR. OLDS: It has only gone, your Honors, up to the stage of where no testimony has yet been taken because of a multiplicity of motions.

JUDGE LEDERLE: Mr. Olds, just a moment. All that they are asking now is not to restrain the removal but to restrain the investigation.

MR. OLDS: Well it is a little more than that, your Honor.

JUDGE LEDERLE: Well is it?

MR. OLDS: Yes, it is a little more than that, more than an investigation. You see under the grand jury law the grand juror is given two types of powers; he is given the power to indict or they call it a warrant; he can issue a warrant; they don't use the word "indictment"; he can issue a warrant charging individuals with the commission of crime and cause their apprehension. And from then on the case proceeds as if the warrant had been issued by a justice of the peace. He has an additional power, and I trace the history of that power in our brief, how it arose.

JUDGE SIMONS: Well tell us what it is.

MR. OLDS: To make findings involving misconduct on the part of public officials; to send those findings to the body who has the authority to remove that public official. That finding then merely takes the place of a citizens' petition for removal. Removal proceedings ordinarily are initiated by citizens who file affidavits and what not showing misconduct with the Governor if it is his jurisdiction or with whatever body it is that can remove him. This statute merely substitutes the grand jury findings for the citizens' petition.

When those findings are sent to the Governor they are simply charges. He has to hear them, or he can ignore them if he wants to; he can get the findings and then he can ignore them. Or he has the right to set them down for hearing. Then it is up to us, the Attorney General or the Prosecuting Attorney, depending on whom he designates—he can designate either the Attorney General or the Prosecutor; or he can designate a Probate Judge to hear it or he can designate a Circuit Court Commissioner to hear it. All we do then is present the evidence to this official whom he has designated and then we secure that evidence and we summarize it and send it to him And then he can give the respondents a hearing if he wants to before himself if he chooses.

JUDGE SIMONS: Now you have outlined the process, but at what stage is it now?

MR. OLDS: The stage now, your Honor, is that the Probate Judge appointed here has delayed the taking of any testimony.

JUDGE LEDERLE: Well Mr. Olds, if you will let me answer that and see if we can reach some agreement. The stage as I see it, Judge Simons, is that the complaint has

been filed and the Governor has ordered the Attorney General to proceed with the investigation. Am I right?

MR. OLDS: The presentation of evidence, if that is what your Honor means.

JUDGE LEDERLE: Yes, sir.

MR. OLDS: The presentation of evidence. He cannot remove purely on the findings. That has been held in the Macomb case. You must have more than just the findings. But we must then satisfy him by evidence sworn to before the person he has appointed to hear it that the charges are—

JUDGE LEDERLE: That is what you would be doing right now?

MR. OLDS: That is what we would be doing right now.

JUDGE LEDERLE: You would be gathering evidence.

MR. OLDS: That's right. And the removal proceedings have not yet—

JUDGE LEDERLE: Don't spoil it. You said you were gathering evidence.

MR. OLDS: Well we are more than just gathering evidence. We will present evidence.

JUDGE LEDERLE: You will record it by transcript.

MR. OLDS: That's right. The function of the Probate Judge is merely to swear the witness, take the evidence, certify to the transcript and send it to the Governor. Now we feel, your Honors, that in view of these Supreme Court

decisions which our research reveals have been in no way tampered with by any subsequent decision of the Supreme Court of the United States—and my brother cites none—that we here urge that this court has no jurisdiction to entertain this bill of complaint whatsoever.

Of course, before we get into the doctrine that the Governor is a coordinate branch of the Government; he is an independent branch of the Government. The case which they cite, the Coffey case which they cite, in which our Supreme Court refused to review by certiorari the removal action of our Governor and thereby indicated that they don't have any remedy in our courts, is misconstruing the whole problem.

The Supreme Court of the United States pointed out numerous remedies that are provided on the law side: quo warranto; prohibition; information in the nature of a quo warranto; certiorari—all those are available depending on the nature of the case to review removal proceedings. And they have been utilized in our own courts time after time.

Now the minute that our court refuses to review directly the action of removal of the Governor by certiorari, because that it felt that he is an independent branch of the Government—and he is certainly; our court has no business reviewing his action any more than he has of reviewing the action of the Supreme Court or the action of the legislature—but that doesn't mean that there is no remedy.

If the Governor in this case decided after he heard this whole matter to remove—

JUDGE LEDERLE: Mr. Olds, let us see if we can't get this straightened out now. We are not here considering a removal by the Governor, are we?

MR. OLDS: That's right.

JUDGE LEDERLE: Why can't we stick to the proposition as to whether this court has a right to restrain the Governor from investigating?

MR. OLDS: That, your Honor, has been fully covered, as I say, in these three cases, and the last one, as I say, being the one of Wilkowski, in which the Supreme Court of the United States did not even write an opinion; just turned it down on the basis that there was no substantial Federal question involved, because they had decided previously that the Federal courts in equity had no business interfering in any way with removal proceedings, either of Federal officers or of State officers. Consequently there was no need for them to write an opinion at this late date.

JUDGE LEVIN: What do you say to Mr. Young's argument that there is no adequate State process to guarantee due process in your proceedings, due process under the Constitution in your proceedings, to try this removal proceeding at this time, which in effect will not permit him to adequately defend the removal proceedings because of the pending criminal case?

MR. OLDS: I will answer it in this way, your Honor. It is basic that this court will not interfere with the functioning of a State court in the conduct of criminal cases and will not stay the hand of our criminal courts.

JUDGE LEVIN: I am not talking of a criminal case.

MR. OLDS: I appreciate that, but I preface it with that. He claims that his rights will be violated. Now he is merely projecting that his rights will be violated. He

merely thinks that they will be, when he comes to defend himself or his clients in the removal proceeding.

JUDGE LEVIN: He says that he cannot put his clients on the stand before Judge Conlin in the removal proceeding because it will jeopardize him in the criminal proceedings, and there is no adequate State process to protect him and guarantee him the protection of the Fourteenth Amendment, the due process clause.

MR. OLDS: Your Honor, he says that these witnesses refuse to take the stand. They have no choice as to whether they should take the stand. They can be subpoenaed, and when they are subpoenaed and put on the stand by him then we will find out whether they have the right to refuse to answer questions. Then is the time when we have got to determine,—not now.

They can't just say, "Well we won't testify"; therefore everything has got to stop. It would be an odd doctrine, indeed, your Honor, if all the processes of our courts would have to come to a halt just because some witness in advance proclaims to the world that he is not going to testify.

Now let us say that he is trying his criminal case, and he puts these very same people on the stand. Can't they still refuse to testify on the ground of self-incrimination? There will be no difference there. There are all kinds of situations where witnesses cannot be made to testify. One of them is self-incrimination. Another one is relationships between attorney and client; another one is between doctor and patient.

JUDGE SIMONS: Privilege.

MR. OLDS: These are privileges. Now are our courts

going to go out of business and refuse to hear cases because witnesses in advance come in and say, "We are not going to testify"?

JUDGE SIMONS: Anything further?

MR. OLDS: That is the argument we have, your Honor, on that issue. And there are no cases on it one way or the other. Both counsel for these complainants admit there is nothing on it, because I presume the idea is so preposterous that it never has occurred to any one to raise it.

And then on top of that, is this court going to stay the hand of a coordinate branch of Government, just on the allegation that witnesses who might testify for the official are going to keep their mouths shut and not testify? Is that sufficient basis to give jurisdiction?

We also raise, if the court please, the fact that under the Eleventh Amendment to the Constitution—but before I get to that I would like to disabuse this idea that is going around that a public office is a species of private property. Our court time after time in decisions that I have cited and in very late decisions that I have here, emphatically speaks out and says that public office is not private property. It does not come under the protection of the due process clause, despite the fact that some people have the idea that just because they have a salary attached to it, therefore there is a species of private property involved. Now that is the decision of our own State courts in interpreting our concept of what a public office is. A public office is a public trust. It is not private property at all.

So what is the private property that these people are urging that this court protect? There isn't any here.

And so did the Supreme Court of the United States in these cases that I have cited adhere to the doctrine there is no private property involved in public office.

Therefore we urge of course again that under the Eleventh Amendment this court is without jurisdiction.

The Eleventh Amendment, as you know, arose out of the great clamor that grew up shortly after the Constitution was adopted because of a suit that had been filed against the State in the Federal Courts, and it reads this way:

> "The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State or by citizens or subjects of any other foreign State."

"The judicial power"—that is the very word that is used in that part of the Constitution which creates the courts—"the judicial power".

To my mind there is a vast difference between jurisdiction and judicial power, although sometimes the two are sort of intermingled and confused.

Is this a suit against the State of Michigan? Of course, we have decisions that say that a suit against a Governor who is trampling upon people's private rights is not a suit against the State. That is the Johnson Oil Company case involving the Governor of Oklahoma and Texas, and so on.

But are we dealing here—is the Governor here trampling upon anybody's private rights? All he is doing is seeking to do his constitutional duties, namely, to hold and conduct

removal proceedings to determine whether these people should be thrown out of office. Isn't that a suit against the State of Michigan?

JUDGE LEDERLE: Mr. Olds, now let us stop a minute. We tried to get that straightened out a while ago. There are no removal proceedings pending against the officers before the Governor at this moment, and there will not be until he makes his report. Then he will decide whether he will conduct removal proceedings.

MR. OLDS: No, your Honor; I want to not confuse you; he is conducting removal proceedings.

JUDGE LEDERLE: What has he done?

MR. OLDS: So far nothing. He has not been able to so far.

JUDGE SIMONS: He has been restrained by a temporary restraining order.

MR. OLDS: That's right. There has not been one word of testimony taken.

JUDGE LEDERLE: But he has carried out the duties imposed upon him by statute.

MR. OLDS: That's right.

JUDGE LEDERLE: Directing you to proceed and selecting a public official to take testimony.

MR. OLDS: That's right. That is all we have done so far. And now we are stopped from doing it.

JUDGE LEDERLE: And nothing will happen until he gets that record and he reviews it, and if, as, and when you get to that you may or may not have a hearing. Maybe by that time your criminal case will be over, and the defendants will all be found not guilty and the problem will all be solved. Isn't this premature, in other words?

MR. OLDS: It is premature, and we raise that issue in our motion and in our brief.

JUDGE LEDERLE: Have you anything else?

MR. OLDS: I don't think so.

JUDGE SIMONS: Anything further, Mr. Young?

MR. YOUNG: Mr. Cavanagh in behalf of Mr. LaBadie has a few remarks in reply.

MR. CAVANAGH: May it please the court, my remarks will be necessarily very brief. I represent the complainant Francis LaBadie and my name is Cavanagh.

Just one thing struck me in regard to Mr. Olds' argument, his contention that this is a suit basically against the State and not against State Officers, and therefore is not cognizable by this Federal court. I contend your Honor that that is something which goes to the very merits of this action, and should not be raised on this motion to dismiss. And there are cases to the effect—I have to excuse myself for citing Corpus Juris Secundum. However, I noted it here—two Federal cases in regard to that point. And the rule says that in cases decided—I am quoting now from Corpus Juris Secundum page 933 under "Federal Courts":

"In cases decided before the Federal Rules of Civil

Procedure, 28 U. S. C. A., became operative, it was held to recognize that a contention that the Federal court is without jurisdiction of an action against a state officer for the reason that the action is in effect against the state should be raised by demurrer or other pleading in the regular progress of the cause and not on a motion to dismiss for want of jurisdiction nor should the court dismiss such an action on its own motion on grounds of want of jurisdiction."

"It seems however that if a suit directly names a State, therefore the court, it would appear, could do such because it is in violation of the Eleventh Amendment to the Federal Constitution."

And they cite for that the case of Sculley vs. Byrd, a case arising out of Michigan, 209 U. S. 481; and also Illinois Central Railroad vs. Adams, 180 U.S. 28.

Nevertheless the fact that the Eleventh Amendment does bar a suit against the State, I don't think there can be much question about the fact that it does not bar an action against various State officers for acting under an invalid statute or possibly acting in an illegal manner under a constitutional statute.

The point was raised here as to what the functions of this Probate Judge appointed by the Governor are and what duties he has, I might say that it has been determined in many cases and determined here too by Judge Conlin that this removal is a judicial proceeding and he is attempting to proceed in a judicial manner.

The question as to what his functions are—that is the very point, your Honor, or one of the points, I believe, that hasn't been exactly determined, what the procedures and

functions of this Probate Judge sitting as a removing officer or as an agent of the Governor who is the removing officer, are.

Some cases which have been raised in Mr. Young's brief which I have deigned to adopt illustrate this point that the review of the Governor's determination, or a review, may not be attacked by the Supreme Court. And they said in People ex rel. Sunderland vs. the Governor, 29 Michigan:

> "We cannot interfere with his discretion; we will not subordinate him to our process."

And they also said in Germaine vs. Governor Ferris that certiorari does not lie to remove the determination of the Governor of the State.

However, one point struck me which I would like to bring out, bring to the attention of the court, and that is the question of exhausting State remedies prior to appealing to the Federal Court for some type of relief.

The Doud vs. Hodge case has been discussed rather thoroughly, and there, of course, they said that there was no need necessarily to first exhaust State remedies before you could appeal to the Federal Court.

Now also there are two cases which I feel possibly would be in point. And it is a 1946 case called Hillsborough Township vs. Cromwell, 326 U. S. 620. And this was an action to have declared null and void certain state taxes on the ground that they constituted an illegal discrimination in contravention of various Federal constitutional rights. And the court held there that it was not bound to remit the complaint to a State court before passing on the issues involved, since it appeared, 1, which wouldn't be in point

here, but it appeared that the time had expired for these complainants to appeal to the local tax board. And I think more important, number 2, they found that the remedy under the State law was not adequate to protect the complainant's rights under the Federal Constitution.

Another point I would like to submit to the court at this time would be a case entitled Meredith vs. Winter Haven 320 U. S. 228, and the court there pointed out—and if the court will excuse me for just reading this sentence from this page for a moment—the court there pointed out that in the absence of some recognized policy or defined principle governing the exercise of jurisdiction conferred which would in exceptional cases warrant its non-exercise, it has from the first been deemed to be the duty of the Federal Courts to decide questions of State law whenever necessary to the rendition of a judgment, and that when such exceptional circumstances are not present denial of that opportunity to Federal Court merely because the answers to the questions of state law are difficult or are uncertain or have not yet been given by the highest court of the State, would thwart the purpose of the Federal judiciary.

It was also said that to remit the parties to State courts in such a case would penalize the plaintiffs for resorting initially to a jurisdiction to which they were originally entitled.

I submit also that a party, if some of the other jurisdictional requisites are met and a substantial Federal question, that a party cannot be denied the resort to a Federal Court for the protection of his rights because merely also a remedy might also be sought and obtained in State courts. And in substantiation of that statement I would like to cite to the court two District Court cases, one arising in Kentucky, another in Texas, Central Ken-

tucky Natural Gas Co. vs. The Railroad Commission of Kentucky, 37 Fed. 2d 938, and the Texas case being entitled Panama Refining Co. vs. Railroad Commission of Texas, 16 Fed. Supp., 289.

The United States Supreme Court in Lane vs. Wilson, 305 U. S. 591, said it was the rule and that barring only exceptional circumstances or explicit statutory requirements, resort to a Federal Court may be had without first exhausting the judicial remedies in the State court.

And the Doud vs. Hodge case certainly I believe substantiates that statement.

The case against the Governor of Indiana, Paul McNutt, called the Premier Pack Sales Corporation vs. McNutt, had to do with the State sales tax act. The court there briefly said that state officers were not entitled to a dismissal of suit to enjoin them from enforcing a state statute where the plaintiffs alleged constitutional rights were being violated by enforcement of a specific State act, since the determination of the validity of the act was required.

Now rather than take up too much time of the court's I would like to attempt briefly or succinctly merely to say this: that it is the plaintiffs' contention in this matter that the law surrounding the thing with which we are faced right now, the Michigan law, is so hazy and so ill determined because actually it has not been determined clearly, that therefore we are without a remedy in State courts and we are in front of this body appealing to this body for relief.

Now the question as to whether we can eventually—you can eventually grant relief I suggest is something which has no bearing upon the determination of jurisdiction. It

may be that after hearing full argument and more complete briefs and possibly testimony if the court desires testimony, you may then decide that we are not properly in front of the court because of the lack of a substantial Federal question, or that our constitutional rights have not been abridged. But I suggest to the court that merely because that might eventually happen that is not sufficient for this court to refuse to invoke jurisdiction at this time.

And all these cases which Mr. Olds mentioned, the Sawyer case in particular, and the other cases that he also mentioned—incidentally the Wilkowski case I think is hardly in point because there a State Senator appealed from a decision of his own legislative body, and I think it is very settled that the legislature has the right to determine its own rules for the seating of its own members. But nevertheless he cited that case. And the Sawyer case, and the Walton case, and so on. There it is different for one very important reason: the one fact exists in this case and that is the very reason why we are here, that did not exist in the other cases and it is this: we are not attempting to end the removal proceeding. We are attempting to restrain, as Judge Lederle put it, the presentation of evidence, the investigative process, until such time as our rights have been adjudicated in the criminal matter.

And I submit to the court that we have raised in our bill of complaint a substantial Federal question involving the constitutional rights of these complainants. I submit that because we have, that the court therefore should accept jurisdiction of this matter to determine this controversy on its merits and not dismiss.

Thank you.

JUDGE SIMONS: Very well. Anything further?

MR. FREED: If I may, I would like to address the court briefly.

JUDGE SIMONS: And whom do you represent?

MR. FREED: My name is Freed. I represent Mr. Elmer Korn, councilman in this case.

I recognize full well that this court is seriously interested and it is our bounden duty to show to this court a substantial Federal question.

May it please the court, Mr. Olds, the Attorney General, has summarized quite clearly the proceedings under which the removal proceedings in this case were commenced. I think I can augment that somewhat by stating that the so called one-man grand jury law, which originally was intended as an investigatory proceeding, provides among other things that the grand juror after being appointed shall investigate. And it also provides, among other things, that the grand juror subjects each person whom it investigates, whether it is a voluntary witness or a subpoenaed witness brought there by the grand jury, to secrecy punishable by contempt of court, which was before the Supreme Court in the Murchison case and in the other cases.

Now we must presume that we are acting ordinarily and properly, that the grand juror made an exhaustive search into ever facet, every angle, every feature, connected with any accusation or any information arising out of any conduct in Ecorse for which the defendants in the criminal case are indicted or complained of.

We must therefore likewise conclude as a final conclusion or analysis, that there are no witnesses whatsoever who are not under oath of secrecy, or that there are very few.

Now the secrecy is imposed upon them by the grand juror. It is not something that they, those witnesses, can waive or it isn't anything personal that would be ordinarily the case under the Fifth Amendment with reference to the indictees. It is strictly within the province of the grand juror.

Now we are faced with a removal proceeding which commenced after a criminal so called indictment or warrant was issued by the one-man grand juror, based upon a so called finding made by the grand juror, which was not verified, not supported by any synopsis of any evidence upon which the same was based, doesn't apprise the accused or the defendants or the respondents or whatever you want to call them of any of the allegations against them except this: that during the course of argument in the briefs in this case the Attorney General said in answer to a demand for a bill of particulars in the removal proceedings, "You don't need it because each one of you defendants had an extensive preliminary examination in the criminal proceeding."

Now we are talking about the secrecy of the witness. I am not going into whether or not a co-indictee may or may not reveal anything that took place or any of the testimony or matters which may have taken place before the grand jury that he is called upon to be indicted, because that is automatically covered by a witness in this case, and Mr. Young has covered that.

I will go even further, however: Mr. Olds stated among other things that the Governor may do or may hear us or may after getting his testimony before him or a synopsis or whatever he may, he says, allow us a hearing up there.

That is the very kind of thing which we are objecting to in this case.

These proceedings, the removal proceedings, whether they are two-fold or one-fold, or whether they arise or are born out of the one-man grand jury proceeding or the removal statute which was set up in the Michigan statutes based on the 1908 constitution, do not set up any standards whatsoever, may it please the court. We don't know what rights we have, as Mr. Young said. Do we have a right to trial by jury? Do we have a right to counsel? Do we have the right to refuse to take the witness stand if we accused or respondents are called by the Attorney General? Does the Attorney General have the right to subpoena our clients in a removal proceeding against them to place them on the stand?

We don't know. It has never been decided, and nobody knows, except this: It has been decided in Michigan under a line of cases that this is a quasi judicial proceeding. By the Governor's condescension he has written a letter to Judge Conlin, the Washtenaw County Probate Judge, and he says:

"You have a discretion as to continuance."

Is that the kind of law, is that the kind of proceedings, which we Americans have countenanced? Or are we entitled to be safeguarded by a standard surrounding us setting forth what the people's rights are, what the defendant's rights are or the respondents' rights. That, your Honor, is a very important question.

I go even further, may it please your Honor: the one-man grand jury law so called in Michigan provides among other things that there is an oath of privilege, that the counsel or

attorneys may be available to any witness brought before a grand juror, and that that attorney is privileged, and his client, the witness, may communicate with his attorney so long, it says, as there is no unavoidable delay in the proceedings before the one-man grand jury. And then it goes on into another section of the same statute that provides, among other things, that a Doctor, Clergyman and the lawyer may or is privileged as to all matters communicated to him by his client in the matter of investigations in the grand jury, in such proceedings and in such matters as may be necessary for the defense and proper representation of the witness before the grand jury.

Now in this case, may it please your Honor, I represent Elmer Korn who was before the grand jury. He has of necessity revealed certain matters to me and in which matters I am privileged. By my joining in this very complaint before this court in what I as an attorney believe to be a proper and legal defense and a proceeding for my client's benefit, I am in violation of the one-man grand jury law in Michigan. That means, may it please your Honor, that the one-man grand jury law which makes it mandatory on the Governor to proceed, has restricted my client's right to counsel.

JUDGE SIMONS: Now wait a minute. You are going rather far afield. We have here a problem as to whether this court has jurisdiction to interfere by injunction against a proceeding which is still going on except for the fact that there has been a temporary restraining order, or whether these plaintiffs should be relegated to their rights under State law, and an interpretation of the State law and the constitutionality of the State law. We are not, at present at least, concerned with these things, whether you violated your privilege or violated the one-man grand jury law.

MR. FREED: Well, may it please your Honor, I merely mention that—and I think it is important that this court be apprised that these two laws are melted one into the other, and a removal proceeding is born out of the grand jury law.

And may it please your Honor further, that there is no skeleton for procedural due process in the removal proceeding; and that in effect there is no provision as to right of counsel. We don't know whether we are entitled to a trial by jury in the removal or whether or not we can be subpoenaed or whether we can subpoena. We know so far that everything is privileged in the hands of the people or the Government or the Attorney General in this case, and the proceeding as a "by your leave" proceeding instead of a statutory and proper rightfully conducted proceeding.

We have so far asked Judge Conlin's rulings as to the type of proceeding that he has before him and he says, and the record will bear me out:

> "It is a quasi judicial proceeding as far as I know. I don't know what that means in the State of Michigan by virtue of the decisions of the Michigan Supreme Court."

But he says:

> "As far as I am concerned", he says, "you will be entitled to all the protections of the rules of evidence."

May it please your Honors, that in and of itself is a condescension on the part of a hearing officer. I contend that that is a violation of due process. It is a bill of attainder because it sets up no judicial review whatsoever. It does not provide for a proper hearing, but it provides for a hear-

ing that is permissive to grant us certain protections under the Constitution or not, and from those, may it please your Honors, we can review only if it is arbitrary, if the determination of the Governor, which we are not concerned with now—we are not concerned with whether the Governor finds us subject to be removed or not; we are concerned with the judicial due processes to which we are entitled in a removal proceeding, which is not provided by the laws of the State of Michigan and to which we are compelled to answer in a removal proceeding whereby we subject ourselves to being doubly harassed in the same kind of proceedings as a criminal as far as we know; but in the criminal, may it please your Honors, we can defend because there we do have the skeleton of due process provided for us and laid out.

Before I finish—and I don't intend to go long—your Honors in the *Quicksaw* case in Michigan, which was a review of the Michigan Supreme Court decision held some time in 1947 or 8—I don't remember the date of it—that summary justice in Michigan is not due process of law. It happened to be a murder case. Maybe your Honors remember it. I am not going to summarize it.

The Supreme Court of the United States held in the Shelley vs. Kramer case, and the Sykes vs. McGee case, that even though the individuals had the right to contract, to restrict certain restrictive covenants in reference to Colored people buying or purchasing, your Honors held that that is a contract that still exists; that was a private contract. But you held that that was a violation of due process.

Now I merely point out to your Honors that the same thing is happening here. Procedural due process is important. Whether the statute itself is constitutional or unconstitutional, whether in the final analysis the Supreme Court

or the court on final hearing will say that this court has no jurisdiction, it behooves this court to have its finger to the pulse of the times, and even though it may be upsetting the traditions, sometimes hidebound traditions, the urgency of this situation requires that this court at least for the time being stay these proceedings and continue them for such a time until after a criminal hearing and determination in the principal criminal case, and after a final hearing before this court on the merits feels that this court has no jurisdiction then that is a matter to be determined then as my brothers have so ably argued.

Now one other thing to show the nature of the constitutional questions in addition to those mentioned, the punishment on removal by the Governor provides among other things that no person so removed may hold public office for three years and he can't have any position of trust or be a guardian or an administrator. Well our laws provide or the Constitution provides that every one shall have a right to run for office as far as I know. Maybe it doesn't say so in so many words but that is our inalienable right which we have been so proud of. We have even said that a baby may be the President of the United States. But on that, your Honor, the fact that the witnesses have been—the field has been swept as far as witnesses are concerned. We have no witnesses.

I am going to end and ask your Honors if you feel that we are wrongfully before this court that you will permit us either to file memorandum briefs or give us a further stay so that we can prepare for such other action as may be necessary.

JUDGE SIMONS: Anything further?

MR. GUEST: May it please the court, my name is Michael

Guest, and I represent Albert Buday. Because of the remarks that have been made by brother counsel my remarks will be very brief, because I think they have quite well covered the case, although I would like to submit this to the court, if I may. I think that we are here on equitable principles. We are asking for discretionary relief from the court, and I think that it would be proper for me to submit this thought, that at the present time, and for some time heretofore, there has been no indication that there is any present misconduct on the part of the petitioners, on the part of the officers of the City of Ecorse, those people whom the state of Michigan is attempting to remove. And in other words there is nothing urgent that they to be removed presently because of their present misconduct or their present fear of misconduct.

I do not exactly agree with Mr. Olds, my interpretation of his remarks being that the proprietary interest may be more important than the human interest and the individual rights of any citizen.

I interpret the remarks of Mr. Olds to mean that if in the event we feel that we would be compelled to incriminate ourselves in testifying at the removal proceedings we don't have to testify there. We may take the shame of removal or the stigma of disgrace.

I interpret the remarks of Mr. Olds to mean that in the event we may not be able to receive the assistance of co-indictees or other persons who have been before the grand jury and have been sworn to secrecy, we are not entitled to equal protection of the law. We just can't have that testimony, and we should again permit the Governor to remove us and give us the stigma of removal, of misconduct in office as officials.

I don't think that the court will agree with those principles if those are the principles that Mr. Olds has been stating to the court. I do believe that we in our bill of complaint—that we have stated a Federal question. I think we are entitled to the equal protection of the laws, and indirectly we are entitled to the protection of the Fifth Amendment through the Fourteenth Amendment, that is, we are entitled not to be compelled to incriminate ourselves.

There is no question in my mind, and I believe that there will be some thought in this court's mind also, that this may be an attempt on the part of the Attorney General's office to compel us to come into court and divulge our defense in the criminal case. In other words, I think the equitable principles would mitigate in our favor.

There is no showing made now that there is any urgency or necessity of the immediate proceedings in the removal, because of the misconduct or alleged or feared misconduct of these petitioners. I believe that due to the fact that there is no such urgency that a proper application of the law and due process would require the State of Michigan to first proceed with the criminal case and that there be a determination there, that we may be given equal protection of the law, that we may come in, after the criminal case is over with, on the removal proceeding and at that time we may take the stand ourselves, and there will be no self-incrimination. And we may be able to procure such witnesses who are not now definitely—I think it is obvious who are not now available to us, because of the grand jury proceedings.

I think other than that I think our views have been very adequately stated by preceding counsel, and I don't think I should be accused of any repetition.

JUDGE SIMONS: Very well. Anything further on the part of the State or its officers?

MR. SULLIVAN: May it please the court, my name is Joseph Sullivan, Deputy Attorney General, and I only wish to comment upon one remark made by counsel, which I believe should not go uncontradicted on this record.

Counsel suggests to this court that any witnesses that might be available to the complainants in this case for their defense in a removal proceeding would not be able to testify to that defense in the removal proceeding because of the oath of secrecy before the grand jury. I submit that there is nothing in the Michigan statute pertaining to grand juries that would give rise to that inference.

Now is it a fact that any witness under subpoena before a tribunal acting in a removal proceeding can refuse to testify on the ground that he has been before a grand jury and sworn to secrecy? The court is a proper place to testify to the pertinent testimony taken before the grand jury, and if it pertains to malfeasance in office or other grounds for removal the forum provided in this instance, that is the Probate Court, is the proper place for that testimony to be divulged.

I have nothing further to add except for that statement.

JUDGE SIMONS: Very well. If there is nothing further, the case is submitted, and you will be apprised as to the action of the court upon the motion to dismiss.

If it is not dismissed we will advise you as to what further light the court would like to have on the merits.

CERTIFICATE

I hereby certify that I have recorded by shorthand the proceedings had in open court in the above-entitled matter, on Tuesday, January 29, 1957, before the Honorable Three-Judge statutory Court, and that the foregoing transcript, consisting of sixty-eight typewritten pages, is a true and correct transcript of my said shorthand notes, to the best of my skill and ability.

Dated at Detroit, Michigan, February 4, 1957.

Earl T. Chamberlin
Official Court Reporter

APPENDIX 2

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIAM W. VOISINE, FRANCIS LaBADIE, ALBERT BUDAY and ELMER KORN, Complainants, vs. JOHN W. CONLIN, G. MENNEN WILLIAMS, THEODORE R. BOHN and THOMAS M. KAVANAGH, Respondents.	No. 16338.

Proceedings had on Motion to Dissolve Temporary Restraining Order, before the Honorable Charles C. Simons, Chief Judge of the Circuit Court of Appeals, the Honorable Arthur F. Lederle, Chief District Judge, and the Honorable Theodore Levin, District Judge, sitting as a statutory three-judge court, at Detroit, Michigan, on Friday, March 8, 1957, at ten o'clock in the forenoon.

APPEARANCES:

MR. FRANCIS K. YOUNG,
Appearing for William W. Voisine

MR. JEROME P. CAVANAGH,
Appearing for Francis LaBadie

MR. MICHAEL A. GUEST,
Appearing for Albert Buday

MR. JOSEPH FREED,
Appearing for Elmer Korn

MR. JOSEPH A. SULLIVAN, Deputy Attorney General,

and

MR. NICHOLAS V. OLDS, Assistant Attorney General,
Appearing for the respondents.

MR. ROBERT TAYLOR, JR., Assistant Wayne County Prosecutor,
Appearing for Honorable Theodore R. Bohn, Judge of the Wayne County Circuit Court.

Detroit, Michigan
Friday, March 8, 1957,
10:00 o'clock A.M.

PROCEEDINGS

JUDGE SIMONS: Will the Clerk call the case that has been set for this morning.

(Whereupon the clerk called the above-entitled case.)

JUDGE SIMONS: Who speaks for the movants?

MR. OLDS: May it please the court, The Governor of the State of Michigan and the Attorney General have filed this motion to dissolve the temporary restraining order that was issued by this court to enjoin the Governor from continuing with the holding of the removal proceedings as against these complainants.

The restraining order originally, of course, was issued by Judge Levin, and thereupon we filed a motion to dismiss the bill of complaint, which was heard before your Honors on January 29th. As a result of that hearing this court entered an order in which it decided not to determine the motion to dismiss, not to determine the application for a temporary injunction, but rather to delay determination of those issues, and in the meantime continued its temporary restraining order. Therefore, so far as the Governor of the State of Michigan is concerned, the continuance of the restraining order was in substance and effect a granting of a temporary injunction.

Nevertheless, so that there be no misunderstanding, and that in case of an appeal there be a full picture of this controversy before the appellate courts, we thought it wise to file a motion at this time to dissolve the temporary restraining order, so that this court would have the benefit of hearing such a motion and deciding on it.

Now I am going to read the motion to dismiss which we have filed.

JUDGE SIMONS: Well wouldn't it save time to just tell us the substance of it?

MR. OLDS: Well the first part of the motion, of course, your Honor, deals with the lack of jurisdiction. We feel that if a court lacks jurisdiction it certainly should not issue any orders of any kind until that question is decided. So the first part of the motion, as I say, deals with that problem. And we insist that the non-action on the part of this court on defendant's motion to dismiss, then coupled with the restraining order of February 1, 1957, results in an unconstitutional interference on the part of the Federal judiciary in the political affairs and responsibilities of the Governor of the State of Michigan, and those affairs have to do with the disciplinary authority which he has over the municipal and local public officials.

And then we insist, if your Honors please, that such interference with the duties and prerogatives of the Governor of the State of Michigan is inimical to the public good and interest, because the Governor is thereby prevented from determining after hearing whether said public officials should remain in office and be allowed to conduct the public affairs of the municipality.

We thought, your Honors, that it would be enlightening if we brought before you a graph of what is here involved. I am afraid possibly we didn't stress too much the complexity of the situation. We have here under indictment the Mayor of the City of Ecorse; we have under indictment for conspiracy—

MR. YOUNG: Pardon me a moment, Mr. Olds; would you

mind being on the other side so I might see what you are doing.

MR. OLDS: I am sort of right handed but I can do that.

MR. YOUNG: Then I can follow you.

MR. OLDS: We have under indictment three of the six members of the common council. The charter of the city of Ecorse provides that the Mayor functions as a member of the Council. He votes with the Council. He doesn't veto their action; he merely is a member of the Council on any matter before the Council. Consequently the three indicted officials plus the vote of the Mayor absolutely control the policies of this municipality while they are still under indictment.

Another phase of this problem, if the court please, is this which is somewhat neglected in the uproar of affairs: the Mayor of every city of our State functions as a member of the Board of Supervisors of the County. In the City of Detroit the Mayor and members of the Council and many other appointees of the Mayor function as members of the Board of Supervisors to the extent, if the court please, that the policies of Wayne County are practically controlled by the city officials of the City of Detroit.

Now on the Board of Supervisors there is every supervisor of every township automatically and then, as I say, the Mayor of every city plus other officials depending on the population of that city—

JUDGE SIMONS: Well the members of this court are all citizens of Wayne County and we have a fair understanding of the structure of the County Government.

MR. OLDS: I wanted to point out this thing, your Honor, because this gentleman, Mr. Voisine, as a member of the Board of Supervisors votes on the very question of whether the judiciary of the County of Wayne should function, on whether funds should or should not be appropriated for the conduct of this grand jury.

And that is how serious this thing is.

JUDGE SIMONS: Will you get down—I was going to say that perhaps it is an anomalous situation, but we sit here as a court of equity, and these complainants here claim that due process would be denied them, not because the Governor has no authority to remove an officer under certain procedures, but because you have pending in a certain court a criminal case against these same complainants. And as I understand the position of the plaintiffs in the principal case it is that a removal proceeding prior to the trial of the criminal proceeding will constitutionally affect their rights in the criminal proceeding, because you cannot keep it out, because the burden of proof materially differs in the removal proceeding from the criminal proceeding, and that they are entitled to be free from extrinsic influences when they go to trial, which they are willing to do. That is the situation as it presents itself here.

MR. OLDS: Yes, your Honor, but may I suggest—

JUDGE SIMONS: At least that troubles me and perhaps troubles some of the other members of the court.

MR. OLDS: May I suggest, your Honor, that every defendant in every criminal trial has to face some realities, he has to face the reality of even publicity of his indictment, publicity of his examination. Does the fact that possibly

that publicity might injure him in some way, does that deprive the court—

JUDGE SIMONS: But you have a different situation than publicity, mere publicity. If these removal proceedings go on and result in their removal you will have them coming into a criminal court already tarred with a formal proceeding by State authorities that they somehow or other violated their oaths of office or have been guilty of crimes and misdemeanors and all that sort of thing, and they do not come in free of that influence.

MR. OLDS: Well your Honor, when I become a public official, isn't that the risk that I run? Do I have the right, as a public official, to sit in office and exercise the powers of that office protected even by the injunction of a court?

JUDGE LEVIN: But even public officials have the benefit of Federal Constitutional guarantees.

MR. OLDS: Not to the extent of a private citizen, your Honor.

JUDGE SIMONS: Why not? If they are indicted for a criminal offense don't they come into court with the same presumption of innocence and with the same rule of the burden of proof on the Government of the State that they must be convicted by proof beyond a reasonable doubt?

MR. OLDS: Are we to assume, your Honor, that a jury will pay attention to what has gone on outside of the court room? Aren't these people when they are tried going to be tried by the evidence presented to that jury and only by that evidence? Aren't they amply protected by the charge to the jury, by the atmosphere of the courtroom? They only can be tried according to court procedure? The jury has no

right to consider any other thing besides what appears before them in that courtroom.

JUDGE SIMONS: And of course they also have the right to be freed from any inferences that may be drawn from other proceedings such as removal proceedings, when they go to trial in a criminal case, are they not?

MR. OLDS: Well freed to what extent, your Honor? Freed to what extent? Are we going to say that the Governor's hands here must be shackled, or are we going to say that he may not protect the constitutional rights in these hearings? Are we going to assume that he will violate their constitutional rights in these hearings?

JUDGE SIMONS: What has that to do with it?

MR. OLDS: Because, your Honor, the purposes of restraining the Governor is, as they say—that is their position—

JUDGE SIMONS: Well let us get down to realities here. There is on the face of these papers and on the face of the arguments that were made here before a reasonable inference that the State wants the benefit of this removal proceeding before it begins its criminal trial in the County courts.

MR. OLDS: Your Honors, the Governor of the State of Michigan has certain responsibilities. He is the third branch of the Government. He is an independent branch of the Government. He has responsibilities imposed on him by the Constitution and the laws of this State, and he would be derelict in his responsibilities if he did not proceed as is required by law.

JUDGE LEVIN: Of course, the Attorney General has responsibilities, too, and he is a defendant in these proceedings before this court. A criminal action is pending which the Attorney General can try. And he knows that these plaintiffs here are obliged to defend themselves in the removal proceedings if they are to have any success there. They must do that while they are still under indictment, and as I understand it the criminal case is ready for trial.

MR. OLDS: Your Honor, that is over-simplifying the problem.

JUDGE SIMONS: Well doesn't it boil down to that very simple thing, as to whether these men will be prejudiced by a successful removal proceeding when they come to defend themselves in the criminal court?

MR. OLDS: In what way—I am at a loss to understand in what way they can be prejudiced. The jury has no right to consider that.

JUDGE SIMONS: Why not?

MR. OLDS: Because it isn't a part of the indictment. All that they are to consider is whether these defendants conspired to obstruct justice. The jury has no right to consider what the Governor did, what the removal proceedings involved, or anything of that sort. They have to decide the innocence or guilt strictly on the evidence before them, as introduced in our courts.

JUDGE LEVIN: You do not think that a jury would be influenced by the fact that argument may be made to it that this man Voisine was the Mayor of Ecorse and was removed by the Governor of the State of Michigan?

MR. OLDS: I doubt if we can make that argument.

JUDGE LEVIN: You don't think you can.

MR. OLDS: I don't think we can make that argument to the jury that they should find them guilty because ——

JUDGE LEVIN: I didn't say that. But when the Mayor takes the stand in his defense in the criminal proceeding, would it be inappropriate and improper under the rules of evidence to ask him if in fact he is not now Mayor of the City of Ecorse because of a removal proceeding?

MR. OLDS: We can ask Mayor Voisine if he ever was convicted of another offense. Are we going to refuse to try him because we can ask him that question? What difference is there between asking him, "Have you ever been convicted of any other offense," and asking him whether he has ever been removed from office?

JUDGE SIMONS: He might be able to answer your first question in the negative and he would have to answer the second one in the affirmative.

MR. OLDS: No, your Honor. I might inform the court he would have to answer the first question in the affirmative.

JUDGE SIMONS: Well I don't know anything about that.

MR. OLDS: We know those things. We cannot insulate, your Honor, every defendant from all extraneous influences. We can't come to the point where we are going to hold the hands of these defendants and act as nurse maids to them. It is not the function of a court of equity to do that, and I have ample authority here, all the decisions that say that a court of equity should not intervene, should not intrude

itself into the political affairs of a community nor should it intrude itself into the criminal prosecution of cases in a State.

I have here an excellent decision by Justice Frankfurter in which he outlines that problem in a New Jersey case where the defendants, who were being prosecuted in a New Jersey court, and the police officials had seized some contraband of some kind, and they were going to use it in that case as evidence. The attorneys for the defendants in the criminal case went into the District Court of the United States and attempted to secure an injunction to enjoin the police officers and the prosecuting officials from using that evidence in the criminal case. In New Jersey, if the court please, they do not have the exclusionary rule on the suppression of evidence; in our State we do. And in the Federal Courts we have it. But they tried to use the powers of the court of equity to assist them in the defense of their criminal case. And that is exactly what they are trying to do right here. They are using this court of equity to help them defend themselves in the prosecution against them by the State of Michigan.

And I would like to read what Justice Frankfurter said—

JUDGE LEDERLE: Wait a minute. I will have Mr. Chamberlin read back the statement you just made and see if you mean that.

MR. OLDS: Possibly in the heat of my argument—
(Whereupon the reporter read the last statement of counsel)

JUDGE LEDERLE: That is not involved here, is it?

MR. OLDS: Well what I mean, of course, is this, as the court has said, that if we continue with our removal pro-

ceedings that might prejudice their defense, so that the result is that this court of equity is aiding them.

JUDGE LEDERLE: Are you say that you want to make use of this hearing on the removal proceedings for the purpose of aiding in the criminal prosecution?

MR. OLDS: No; no indeed, your Honor.

JUDGE LEDERLE: Isn't that substantially what you said?

MR. OLDS: No, I don't interpret it that way. What I meant was this, that in the same manner as these people in New Jersey rushed into a court of equity and attempted to get an injunction to shackle the hands of the prosecuting officials from introducing this evidence in the State court, and thereby assist them in their defense in that court, these complainants are coming into this court and asking this court to assist them.

JUDGE SIMONS: No; what they are trying to do is to prevent you from using these removal proceedings to convict them.

MR. OLDS: That is exactly what they tried to do in this case, your Honor, because with this evidence introduced—

JUDGE LEDERLE: No; I have read that case and that referred to a criminal proceeding and not a removal proceeding.

MR. OLDS: Very well; but I want to make this point, your Honor: in the Sawyer case that we cited in our other brief, in that opinion the Supreme Court of the United States says that removal proceedings are analogous to crim-

inal proceedings and that the court of equity does not have any authority to interfere in criminal proceedings, and based its decision on the removal proceedings on the theory that even in criminal proceedings courts of equity cannot interfere.

In other words, it said that the two things are analogous; they flow from the same principle, namely, that a court of equity cannot interfere with the prosecution of criminal proceedings in the same manner that it cannot interfere with the removal of public officials. And it flows from the same principle. And that is why I cite this case, because we are dealing here with the very same principle that is applied to trying to enjoin criminal proceedings. And Justice Frankfurter indicated that if the court of equity were to intrude itself into things of this sort all kinds of troubles and difficulties would arise:

> "If we were to sanction this intervention we would expose every state criminal prosecution to insupportable disruption. Every question of procedural due process of law with its far flung and undefined range—(that is what we are dealing with here; they claim they are being deprived of their constitutional rights under the due process clause)—would invite a flanking movement against the system of state courts by resort to the Federal forum with review if need be of this court to determine the issue. Asserted unconstitutionality in the impending selection of grand jurors and petit jurors and the failure to appoint counsel and the admission of confession, and the creation of an unfair trial atmosphere—(that is what we are concerned with here, that the removal of these defendants, these plaintiffs, would create an unfair trial atmosphere)—in the misconduct of the trial court, all would provide ready opportunities which conscientious counsel might be bound

to employ to subvert the orderly effect of prosecution of local crime in local courts; to suggest these difficulties is to recognize their solution."

JUDGE SIMONS: Has there been any change in the practical situation since this court entered its order?

MR. OLDS: Not materially, because every defendant in this case has filed a motion to quash. On the other hand, we have filed mandamus proceedings against the Justice who refused to bind over one of the defendants. These motions to quash and the mandamus are being heard piece meal by Judge Fitzgerald. They are still hearing those motions.

It must be remembered that we have here about two dozen defendants, each one of them having filed these motions to quash. How soon those motions will be completed is problematical and how soon the case will proceed to trial after that we don't know.

JUDGE LEVIN: Have the plaintiffs been guilty of any dilatory practices in connection with the hearing of the motions?

MR. OLDS: I shouldn't say so since the hearing before this court.

JUDGE LEVIN: They have acted with speed and with fairness to the prosecution and with an attempt to have an early determination, would you say?

MR. OLDS: Well early in this sense, your Honor: these people come up for reelection in the fall. There is going to be an election in Ecorse in November, and we are here in March.

JUDGE LEDERLE: Well I do not think you answered Judge Levin's question. So far as I have examined the affidavits it would appear to me that at no time did any of the defendants ask for an adjournment or additional time.

MR. OLDS: I am not aware of any. Of course, I haven't handled that phase of it. But I am not aware of any.

JUDGE LEDERLE: In other words, the right answer to Judge Levin's question is that there has been no evidence of any dilatory practices on the part of any defense counsel.

MR. OLDS: So far as I know since the hearing before this court.

There is another phase of this thing here that might be interesting; here all the police commissioners are under indictment. There are five of them and four of them under indictment and they run the police force of the City of Ecorse. They appoint the chief of police, they appoint all the subordinate officers, and these three subordinate officers, Gillman, Lackey and Bobo, were suspended by the chief of police. He is not under indictment—Mr. Royal—and within a week or ten days after the suspension the Police Commission reinstated them.

Now I might say, your Honor, that we know that it is the usual practice that even the lowly cop on the beat, if he is charged with any misconduct of any kind, he is immediately suspended, and then pending his hearing he is not on active duty, because it would be subversive and would subvert the very ends of justice if a police official were allowed to continue to function while he is under a cloud. And yet here we have the whole Police Commission under a cloud and all their main officers under a cloud, and

even when they are suspended why the Police Commission reinstates them.

Now the Governor has no authority over this group.

JUDGE SIMONS: Let me ask you this, Mr. Olds: while formally this proceeding here is on a motion to dismiss, what it really amounts to is a petition to re-hear an application to set aside a previous order.

MR. OLDS: Well not exactly, if the court please. You will recall that we made a motion to dismiss the entire proceeding, the entire bill, and didn't concern ourselves at all with the restraining order. We assumed that this court would decide the motion to dismiss either one way or the other, either grant it or deny it. However, the court saw fit not to decide it and then on the other hand continued its restraining order. And we think that the court ought to consider the equities involved here, the balancing of the equities.

On the one hand we say there is doubtful jurisdiction. We have here tremendous public interest involved. We have a whole city government under indictment, and who, because the Governor is restrained from proceeding with his removal hearing, continue in office and continue to exercise public authority.

Now as against that what is there on the other side of the picture? On the other side of the picture is merely this possibility, this bare possibility that these removal proceedings might prejudice them in the trial of the criminal case.

This court has got to assume in that bare possibility that the court before whom they are tried may not protect them

adequately if these removal proceedings are continued. I certainly cannot assume, your Honor, that whoever tries this case in our circuit court, whatever Judge it is, he is not going to allow any reference (and we certainly as prosecutors will not make any reference excepting as it may become necessary by invitation of the defense), that these people have been removed from office. They will be tried like any other defendant in any other criminal case.

JUDGE SIMONS: All right. We get your point. Is there anything else?

JUDGE LEDERLE: Mr. Olds, coming back to Judge Simons' question, he asked you whether the situation was any different now than it was prior to the hearing, and in effect that you were asking for a re-hearing. At that time the only evidence that the court had that the defendants were seeking an early decision was Mr. Young's statement that he had asked for an early trial. And now we have on the record the undisputed affidavits that the attorneys have been diligently proceeding with their efforts to get the whole criminal proceeding quashed, Isn't that true?

MR. OLDS: It is true, your Honor.

JUDGE LEDERLE: That was really the question.

MR. OLDS: The difficulty is that you haven't got just the case of one defendant but you have here such a large number of defendants that it takes time to hear these motions, to argue them. Judge Fitzgerald, who is the executive Judge over there, of course has many other duties to perform, and he has set these on an afternoon, and he hears a few, then he sets another date, and he hears a few more.

Now let's assume that these motions are argued and disposed of, and the criminal trial can proceed providing of course they don't take an appeal on his decisions, or providing let us assume that he may grant some motions which we couldn't possibly feel he was correct in doing, and in that instance we certainly would not be justified in sitting by, and we would have to appeal his decision.

So you see, your Honor, the progress of this case isn't simple as it seems on the face, because many things can occur during the next six months which will prevent it from coming up for trial.

JUDGE SIMONS: All right.

JUDGE LEVIN: May we assume that Judge Fitzgerald is aware of these proceedings and of the order of the court entered here?

MR. OLDS: I imagine he is.

JUDGE LEVIN: You know he is, don't you?

MR. OLDS: I personally haven't talked to him, but Mr. Sullivan is here. Can you answer Judge Levin's question?

MR. SULLIVAN: I do not believe, your Honors, that I can answer it any more accurately than Mr. Olds. Perhaps Mr. Young knows.

MR. YOUNG: I may represent to this court that Judge Fitzgerald is fully aware of the proceedings here and he has stated on arguments I believe on Tuesday and on yesterday afternoon when he adjourned my further argument until next Tuesday that he was aware of what was going on in this court, but that he had to give full, complete, and

adequate consideration to the matters before him; that what was before this court was separate and that he wasn't going to interfere, but he is hearing over there the questions with the greatest possible dispatch. So he knows the question is here.

JUDGE SIMONS: Anything further, Mr. Olds?

MR. OLDS: I have a multitude of decisions, your Honor, if you would like to hear them, indicating that a court of equity in balancing the equities in matters of this kind must move with great caution; it must be a case free from doubt, free from doubt as to its authority and jurisdiction. We say here, your Honor, that this case is far from free from doubt. If this court has no jurisdiction, and certainly it is doubtful that it had jurisdiction, it should not issue any orders shackling the hands of the Governor of the State in performing his constitutional duties. And with that, your Honors, I shall conclude.

JUDGE SIMONS: Very well. Is there anyone else who desires to be heard on behalf of the movants?

MR. SULLIVAN: May it please the court, without reiterating any of the statements or arguments made by Mr. Olds, in further support of the affidavit filed to the motion asking this court to dissolve the temporary restraining order, we have set out in this affidavit that it has come to our attention that the same type of protection of gambling continues in the City of Ecorse despite the indictment of a number of public officials and law enforcement officers in that city.

JUDGE SIMONS: Those affidavits have been traversed by the respondents here, haven't they?

MR. SULLIVAN: Yes, they have, your Honor.

JUDGE SIMONS: That is, they are not undisputed.

MR. SULLIVAN: They are disputed, I suppose, in the sense that they question on what theory or what source we state these matters on information and belief. But in addition to what has been stated in the affidavit, in further support of our position, and we feel compelled to bring this to the court's attention, because as public officers we feel that it is a matter of grave concern to the people of Ecorse and to the people of the community—on Friday, December 21, 1956, shortly after, several months after the indictments, an article appeared in the Detroit Free Press, which started out this way:

> "Continuing numbers racket operations in Ecorse and River Rouge despite a current grand jury investigation of the suburbs, were revealed Thursday night in a raid on a syndicate."

The article goes on to name people involved, and then down at the latter part of the article the paragraph reads:

> "The trio named as handling the ring's suburban numbers business were Clarence Dean, 56, of 2643 Elmwood, who handled Ecorse".

Now the rest of the article pertains to other suburbs. But it seems to us a matter of very grave concern. And when Mr. Olds speaks of balancing the equities I think that he has in mind among other things the public knowledge from newspaper articles that the very thing for which these defendants have been indicted is continuing in the face of that indictment and while they are awaiting trial.

JUDGE SIMONS: Are these persons who are named in this Free Press article—do they include these defendants or any of them?

MR. SULLIVAN: They do not include the defendants, your Honor, but in the course of the examination of these defendants it was established, I think beyond any argument, that the success of any operation including numbers or any other gambling operation depends entirely upon the cooperation the gamblers get from the city officials. We are told by our people who come into the grand jury and we are told publicly in the newspapers that this is continuing in Ecorse, and we know as a fact that the people who have been indicted for permitting this to go on are still in power in Ecorse.

We suggest that is a matter of grave concern to the people of Ecorse as well as to the entire community.

JUDGE SIMONS: Very well.

MR. SULLIVAN: Now I only wish to add this point that occurs to me during the course of the discussion here this morning: it is assumed apparently that these defendants will or some of them here will be removed from office by the Governor. I do not think that we can make that assumption legally. I think that we have to assume, first of all, that if the Governor is made aware that somehow the removal of these men from office will infringe on their constitutional rights that he himself will be compelled to withhold any action.

But at the present status of this case he has no opportunity to do that if he is compelled by that argument.

JUDGE SIMONS: I do not quite understand. The State is moving, moving vigorously, to be free from the

restraining order that stays the removal proceeding. Isn't the assumption the other way that if this motion to dismiss is granted or the restraining order or injunction is lifted, that the removal proceeding will be immediately pursued?

MR. SULLIVAN: The removal proceedings, your Honor, before the Probate Judge in and of themselves could never dislodge any of these defendants from office. It has to be—

JUDGE SIMONS: Well it would go to the Governor and he has the removing authority.

MR. SULLIVAN: Yes, and the only one that has, and until he acts they are not dislodged from office.

Now I think it is certainly a fair assumption that if this argument raised by the complainants in this case is a valid one that their constitutional rights will somehow be infringed, that certainly the Governor will recognize that as a valid argument. And at this point it has not been made to him and if the order of this court stands it cannot be made to him.

JUDGE LEVIN: But before it gets to the Governor in the hearing before Judge Conlin they would be obliged to take the stand and refute the charges which the Governor has lodged against them, and in doing that it is claimed in their complaint that they will be deprived of their constitutional guarantees in the criminal proceeding, because by appearing in the removal proceedings and giving evidence they expose themselves and are compelled to expose themselves in violation of their constitutional rights.

MR. SULLIVAN: Your Honor, on that point I disagree with counsel. They are not compelled to expose themselves in a removal hearing.

JUDGE LEVIN: No, they can sit by and let the State remove them and make no answer at all.

MR. SULLIVAN: Well there are other ways of refuting the charges made by the witness for the State in the removal hearing.

It has been stated by counsel that the witness relied upon by the State primarily in these cases is a pathological liar and various other adjectives which are used to describe him. And certainly if that is true it ought to be apparent to the Governor or to the officer hearing the testimony, in which case there would be no need to refute these charges.

Secondly, if these charges are refutable it is entirely possible they may be refuted by witnesses other than these particular office holders;

And third, how does an individual's right become—constitutional rights become violated because he testifies? These witnesses have all appeared—these defendants have all appeared as witnesses before the grand jury. Does it become a violation of their constitutional rights because they testify in one proceeding before they testify in another?

Supposing these men were under indictment by both the Federal court or Federal grand jury and a State court for the same crime. Could they enjoin the Federal Government or the State Government because they preferred to hear one case before the other?

JUDGE SIMONS: No, but you have here a different situation. You do not have two criminal proceedings. You have one criminal proceeding and one civil proceeding. The measure that is applied to proofs is entirely different in

the civil case than it is in the criminal case. You do not have to have proof beyond a reasonable doubt. You do not have to have a presumption of innocence as you would have in meeting a criminal charge. Isn't that so?

MR. SULLIVAN: That is so, your Honor.

JUDGE SIMONS: Yes.

MR. SULLIVAN: I do not want to prolong this but it is not clear to me how an individual's constitutional rights are in any way infringed because he finds himself in a position where he feels that it is desirable to get up some time before trial and refute or deny the charges made against him.

Let us assume this man is completely innocent and these charges are all false. In what way is he harmed by getting up and denying these charges or refuting them?

Mr. Young has already indicated that Mr. Voisine, for one, will take the stand in the criminal case. Now how does he injure himself by first taking the stand in the removal hearing? And if he is put in a position where he feels he must stand up and refute those charges before he gets to trial, how does that infringe on his constitutional rights?

And speaking of the irreparable damage that is alleged as part of the complaint, how is he irreparably damaged by having this removal proceeding and attending this removal proceeding? How is he irreparably damaged by merely repeating once what he already intends to say in the criminal case? That part is not clear to me.

JUDGE SIMONS: Very well. We will hear from the respondents.

MR. YOUNG: May it please the court, my remarks are very brief. I have nothing whatsoever to say beyond what I have repeated to this court before. We are still in the same position that we were then.

I have not delayed the criminal proceeding.

When Mr. Voisine takes the stand, it becomes necessary, when the State intends to present a conspirator or an alleged co-conspirator as a witness, that other lesser individuals take the stand to refute that which has been said against them as a conspiracy. We need their testimony. They have the rights also. We are not able to defend ourselves.

The Attorney General seems to want to remove us prior to the criminal trial for some particular reason.

Now when they talk about irreparable damage and injury I want to just state one thing before I sit down. In the beginning, when the Sawyer and these other cases were decided we didn't have such a great penalty attached to removal as we do in the various removal statutes today. Our removal statute carries with it a three-year suspension from again running for public office. In certain other cases, I believe in Mr. Korn who is one of the plaintiffs here, it carries a ten-year suspension. We have a lot at stake.

JUDGE SIMONS: Well are we concerned as a court with the penalties or embarrassments that will be suffered by these people if they are removed, in answer to the Sawyer case? That is a matter for congressional action, and not ours.

MR. YOUNG: That is correct, and I feel that we cannot possibly have a fair hearing in our criminal proceeding if

they proceed with this removal. If this injunction is dissolved, we will have a notice to start next week, and we are under way. And before Judge Frank Fitzgerald can ever determine whether or not there is a proper information—I don't know what he is going to do—he may toss it all out. I stated to this court that from some of the pertinent questions that he has asked Mr. Sullivan that there is some serious doubt in Judge Fitzgerald's mind about this indictment. But I have no idea what he is going to do.

JUDGE LEVIN: If he does quash the indictment there is no question but what the State has the right to proceed with the removal proceeding.

MR. YOUNG: That is right, and this matter is obviated.

JUDGE LEDERLE: Mr. Young, will you and your associates diligently proceed for an early trial in the criminal proceeding?

MR. YOUNG: We are diligently proceeding, your Honor. The one complication Mr. Olds mentioned that has probably bogged down the thing more than anything else is that it produces an anomalous situation, and I might call it to the attention of this court.

Judge Patterson released one defendant at the preliminary examination. Now the state of Michigan claims that Judge Patterson abused his discretion by releasing that man, and they have filed a mandamus action against him, that is Judge Patterson, to try to force him to bind over and bring this man back into the conspiracy. We have not delayed it and we don't intend to.

JUDGE SIMONS: All right. Anybody else?

MR. CAVANAGH: A very few remarks, if the court please. I think it has been pretty well summed up. However, there are one or two things that I would like to direct to the court's attention. Principally they are these, and I claimed or alleged these in my affidavit which is on file with the court.

I submit to the court that if some of the things which the attorney general says in the affidavit which Mr. Sullivan has submitted to this court are true, the restraining order which has been issued heretofore by this court in no way interferes with the enforcement of law within the City of Ecorse. It in no way hampers the work of the grand jury nor causes the grand jury to cease issuing indictments.

In fact, there has been a public statement made by the Prosecutor of the County of Wayne that law enforcement has not broken down within the County and as I set forth in my affidavit on information and belief I know of no request made by the grand juror or the Attorney General's office to either the Ecorse Police Department, the State Police, or the Prosecutor's office to suppress specific instances of gambling.

I would like further to direct the court's attention to this fact, and I submit that if Mr. Sullivan or the aides of the grand juror know of specific instances of gambling or for this conspiracy which they allege took place is continuing, that their duty, it is incumbent upon them as public officers to indict or to arrest. They have that avenue open to them and it is not hampered in any way by this court.

One further thing that I would like to bring to the attention of the court is that the State some time ago could have set this case for trial notwithstanding the motions to quash. Those motions could easily have been assigned and

still may be assigned to the trial Judge—those that have not been heard.

My motion to quash was filed long before we filed our civil action here in this court, but nevertheless these motions as well as any attendant motions in the criminal case could be assigned to the trial Judge if the Attorney General's office worked with the dispatch on the criminal case as they apparently are working with dispatch on this removal action.

There is just one case that I would like to call to the court's attention and then I will be seated. It is the three-judge court case arising out of the District Court of California, and it is entitled Cantlay & Tanzola, Inc., vs. The United States.

JUDGE LEVIN: Is that in your brief?

MR. CAVANAGH: No it is not, your Honor.

JUDGE LEVIN: What is it, again?

MR. CAVANAGH: Cantlay & Tanzola, Inc., vs. The United States, 115 Fed. Supp. 72. In that case, incidentally, they cite two famous Supreme Court decisions, The United States vs. United Mine Workers, 330 U.S. 258, and also the Hovey vs. Elliott case, 167 U.S. 49.

But the court therein said, this three-judge court, that where defendants did not at any time prior to presentation of a motion to dissolve temporary restraining order take any steps to comply with the provisions of the order they were precluded from so moving until they should have made every reasonable effort to comply.

And I submit to this court that although in your order of February 1st you did not lay down specific conditions to be followed by either party, but I submit a fair inference could be drawn from that order that each side was to attempt with dispatch to bring this criminal case to trial, and no delay was to be tolerated by this court, dilatory tactics on the part of either the defendants or the complainants in this case. And I submit that the Attorney General's office —there is a question in my mind whether they are even acting in good faith, because I submit, as I did in my affidavit, that they are deliberately delaying this criminal proceeding.

JUDGE SIMONS: Anything else on behalf of the movants?

MR. SULLIVAN: May it please the court, I don't know whether it is necessary to reply to the statement which I wonder whether—I am not sure whether it was made out of a lack of knowledge of procedure or what, but the statement that the State is deliberately delaying the criminal case. Now it has been said that there is a question in this man's mind whether we are proceeding in good faith. I submit to the court that it is an indisputable fact that the only adjournments asked in either of these proceedings were asked for and granted to the defendants in the criminal case and the complainants in this court. There has been no adjournment granted to the State or made by the State to delay the criminal proceedings in Circuit Court.

JUDGE LEVIN: Then you refute the affidavits filed by the plaintiffs in this case. They have stated the contrary fact.

MR. SULLIVAN: I am refuting the affidavit; I am stating that they are not supported by anything factual in connection with these cases. The state has proceeded—

JUDGE SIMONS: Well what is your present position on it? Do you want the criminal case tried or don't you want it tried, and do you want it tried with dispatch or do you want time?

MR. SULLIVAN: Our present position is that we want the criminal case tried as rapidly as it can be tried, but we resent the implication and the statement that we have done anything to delay it, and that statement cannot be supported.

JUDGE SIMONS: I can understand that, but that doesn't answer the question as to whether the State is ready to go ahead.

MR. SULLIVAN: The State is ready to go ahead now, and it has been since the inception of this case.

Now there was a statement made that the State, by attempting to review the action of the examining magistrate on one defendant has delayed this entire proceeding by bringing mandamus in the Circuit Court. That statement was made by Mr. Young.

The fact of the matter is that all of the defendants in this case are claiming that the examining magistrate abused his discretion in binding them over for trial. The State in one case out of nineteen is disagreeing with the magistrate, and saying that the one defendant should have been bound over for trial. One defendant was dismissed at the examination on the motion of the State.

JUDGE SIMONS: Now Mr. Sullivan, you brought up this article in the Free Press about gambling being still pursued in Ecorse. Has the State or the police authorities or the County done anything about that following that lead given by the newspaper?

MR. SULLIVAN: The State Police have a very limited man power force to police these down river communities. They have and I assume continue to police those areas. But the primary police force in Ecorse is the Ecorse police department.

The grand jury is not a police agency nor are the members of its staff a police agency. And the suggestion that the grand jury ought to go out and find these people if they are available is in my opinion absurd. But what we are stating is that these people are operating—

JUDGE SIMONS: You do not recall that any such proposition has been suggested to us, has it?

MR. SULLIVAN: That is the inference I drew from the remarks just made that it was our duty to apprehend these people if we knew about them.

JUDGE SIMONS: All right. Anything further?

MR. SULLIVAN: I want to make it clear on this record in view of what has been said, if I haven't made it clear, that at the outset the removal case by the very nature of the case moved ahead at a greater speed than the criminal case. There is no preliminary examination in the removal case. There are no motions. There was no long arguments. And I might add that three-quarters of the preliminary examination was used up by the defendants in arguments, motions of various breeds and kinds. The State's case was put in in a matter of two or three days.

Now after the two proceedings got under way there were numerous and frequent requests for adjournment, as we have set out in our answer to the complaint. Every one of these requests was made by the complainants in this court,

the defendants in the criminal case. And they were granted by Judge Conlin who sat as one taking testimony on behalf of the Governor.

JUDGE LEVIN: You are talking now about the adjournments requested in the removal case.

MR. SULLIVAN: In the removal case.

JUDGE LEVIN: Did I understand you correctly when you said that the requests for adjournments in the criminal case since the hearing here have come from the plaintiffs in this action, the defendants in the criminal proceeding?

MR. SULLIVAN: No. I think what I intended to say was that there have been no requests to my knowledge on behalf of the State for adjournments in either proceedings. There have been requests for adjournments which were granted to the defendants in the removal proceedings.

JUDGE LEVIN: But not in the criminal proceedings.

MR. SULLIVAN: Not in the criminal proceedings to my knowledge. If there were any it was only a matter of a day or something like that.

JUDGE SIMONS: Very well.

MR. SULLIVAN: But eventually the criminal case caught up with the removal hearing as a result of these adjournments, and now if there is no appeal from the denial of these motions to quash, assuming that they are denied, if there is no appeal from that, the criminal case will come up to be heard before the removal case could be heard, even if the court were to lift its restraining order, so that in either case the criminal case would probably

be brought on for hearing first. However, I have been personally assured by Mr. Young that he intends to test the constitutionality of the grand jury act in every court in the land before he goes to trial in the criminal case. If that is true, if I may rely on that assertion we may infer that it may be a matter of months or even years before these defendants finally come to trial in the criminal case.

In the meantime the situation, we are given to understand, is in Ecorse almost the same as it was before the indictments. It may not be quite as open, but the gambling activities are going on, with the protection of law enforcement people in Ecorse and City officials.

JUDGE SIMONS: All right.

MR. FREED: May it please the court, I wanted to make a very brief statement.

JUDGE SIMONS: Whom do you represent?

MR. FREED: I represent Elmer Korn, your Honors.

JUDGE SIMONS: Why didn't you rise before we closed that side of the case?

MR. FREED: Your Honor asked if there were any further questions on behalf of the movant and didn't ask for further argument on behalf of the complainants in this case. So I didn't want to intrude upon your Honor's position here and prerogative in delegating who should speak. But I merely wish to make a two-minutes' statement.

JUDGE SIMONS: Proceed.

MR. FREED: That Elmer Korn in this case is charged with a separate indictment, not with conspiracy, not with any allegation connecting him in any respect with any of the other complainants in this case, nor with 28 or 29 defendants in the criminal matter.

On Tuesday last, March 5, 1957, Elmer Korn completed his motion to quash and argued it and it was answered by Mr. Charley Farmer on behalf of the Attorney General. And judging from the questions asked by Judge Fitzgerald, to-wit,—

"Mr. Farmer, where are the elements of this crime that you charge?"

it is apparent to this complainant and this talker before your court that Mr. Korn's matter will be quashed.

JUDGE SIMONS: Well we cannot take judicial no ice of that.

MR. FREED: I merely wish to state it. No—except that we have proceeded with such dispatch on behalf of Mr. Korn—

JUDGE SIMONS: All right.

MR. FREED: And done everything possible to get his case out of the way.

JUDGE SIMONS: Very well. The case is submitted. The court will adjourn.

CERTIFICATE

I hereby certify that I have recorded by shorthand the proceedings had in open court in the above-entitled matter, on Friday, March 8, 1957, before the three-judge court as indicated, and that the foregoing transcript, consisting of forty-one typewritten pages, is a true and correct transcript of my said shorthand notes, to the best of my skill and ability.

Dated at Detroit, Michigan, March 9, 1957.

Earl Chamberlin
Official Court Reporter